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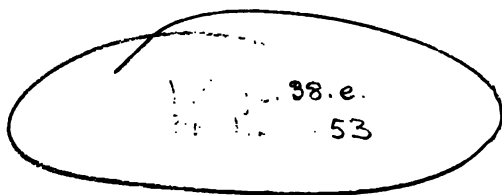


LEIGH & LE MARCHANT'S
LAW OF ELECTIONS
AND
ELECTION PETITIONS.

—
THIRD EDITION

BY
CHANDOS LEIGH
AND
YARBOROUGH ANDERSON

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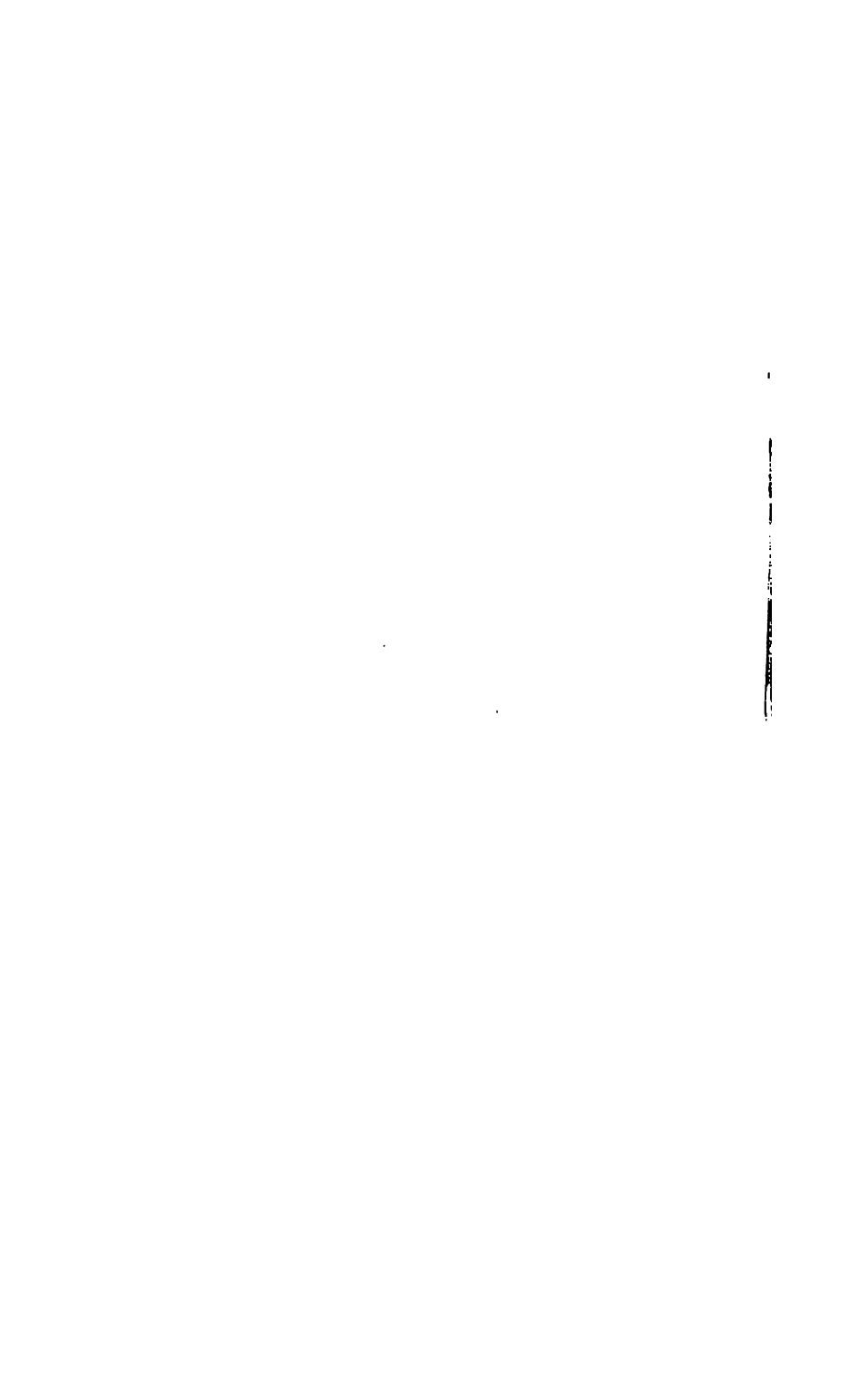


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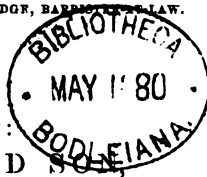
A GUIDE
TO
ELECTION LAW
AND THE
Law and Practice
OF
ELECTION PETITIONS.

BY THE
HON. CHANDOS LEIGH, M.A.
LATE FELLOW OF ALL SOULS' COLLEGE, OXFORD, BARRISTER-AT-LAW,
RECORDEE OF STAMFORD;
AND
SIR HENRY LE MARCHANT, BART., M.A.
CH. CH. OXFORD, BARRISTER-AT-LAW.

THIRD EDITION,

BY THE
HON. CHANDOS LEIGH, M.A.
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OF CHRIST'S COLLEGE, CAMBRIDGE, BARRISTER-AT-LAW.

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PR E F A C E

TO

THE THIRD EDITION.

The success that has attended the sale of the first two editions of this work has induced Mr. CHANDOS LEIGH and Mr. ANDERSON (in place of Sir H. LE MARCHANT) to offer a Third Edition on the eve of a General Election.

The numerous decisions by judges (both in English and Irish cases) since the passing of the Ballot Act, of necessity, have caused some considerable alterations in the Work, particularly in the law of scrutiny, and the addition of new General Rules and Statutes has increased its size, but the main object and original intention of the work has been strictly adhered to by the Authors. A chapter has also been added on Municipal Elections in which the many cases which have been recently decided will be found noted.

The Acts passed in the Session of 1880 (The Parliamentary Elections and Corrupt Practices Act, 1880, and the Town Council and Local Boards Act, 1880) have been added to the statutes in the Appendix, and the changes made by them will be found noticed in the List of Addenda immediately preceding the first chapter.

TEMPLE, *March*, 1880.

P R E F A C E


TO

THE SECOND EDITION.

THE numerous decisions of importance since 1870, together with the changes in the law made by the Ballot Act, 1872, have altered the procedure at the trial of election petitions so materially that the Authors of this work believe a second edition may not be found unacceptable to the profession.

It has been thought advisable to entirely re-write the chapters on "Scrutiny" and "Practical Suggestions and Evidence," but the Authors have throughout endeavoured, as far as possible, to preserve the form of the original text, and to compress all the new matter within the closest possible limits.

The forms of Information and Indictment are omitted, as hardly coming within the scope of the work.



In the Appendix will be found the Ballot Act, 1872, and 6 Anne, c. 7, and 17 & 18 Vict. c. 102 (C. P. P. Act, 1854), have been added, though not printed in the original edition, since a frequent reference to those Acts of Parliament has been found necessary during the trial of a petition.

The subject of Municipal Elections has been referred to whenever it has been thought expedient to call attention to it, and the "Cor. Prac. (Mun. El.) Act, 1872," and the General Rules thereto, are inserted in the Appendix.

TEMPLE, 1874.

PREFACE

TO

THE FIRST EDITION.

THE alterations made by the Parliamentary Elections Act, 1868, in the law relating to the trial of Election Petitions, render it unnecessary to offer any apology for adding another Treatise to the various works which have already appeared on the subject.

As Registration has been already ably handled in Mr. Rogers' book on Elections and Registration, and that subject is untouched by the Parliamentary Elections Act, 1868, it is not treated in the present book.

The aim of the Authors has been to enable the reader, whether he be a candidate or agent, to see at a glance how proceedings, connected with an election, to which the Corrupt Practices Prevention Acts apply, should be conducted, together with the Penalties with which persons transgressing in law may be visited.

Though, perhaps, hardly within the province of this work, a chapter on Scrutiny, and some Practical Suggestions have been added, as illustrating the work of the new procedure.

In the Appendix will be found a special form of information for bribery and an indictment for personation of a voter and making a false answer, together with some scrutiny lists and special forms of petitions; to these have been added the Parliamentary Elections Act, 1868, and the General Rules, Michaelmas Term, 1868, as to the proceedings on Election Petitions.

In conclusion, the Authors cannot refrain from expressing their gratitude to Mr. Baron Martin and Mr. Justice Willes for their valuable suggestions during the progress of the book; also to Mr. John Clerk, Q.C., Mr. Archibald, and Messrs. Wyatt and Hoskins, for the information which they have kindly afforded them.

TEMPLE, *March*, 1870.

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| B. & B..... | Broderrip & Bingham. |
| C. & D..... | Corbett & Daniel's Cases of Cou- troverted Elections. |
| Com. Dig..... | Comyn's Digest. |
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| C. P. P. Act, 1854..... | Corrupt Practices Prevention Act (17 & 18 Vict. c. 102). |
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| Dow..... | Dow's Reports, House of Lords. |
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| Judgments (a)..... | Judgments delivered on the Trial of Election Petitions. |
| K. & O..... | Knapp & Ombler's Cases of Con- troverted Elections. |
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(a) The printed judgments are quoted as authorities when the passages referred to are not contained in O'Malley and Hardcastle's Reports.

| | |
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| L. T. Rep. N. S..... | Law Times Reports, New Series. |
| May's Parl. Prac | May's Law and Practice of Parliament. |
| O'M. & H..... | O'Malley & Hardcastle's Reports of the Decisions of the Judges for the trial of Election Petitions. |
| Parl. El. Act, 1868..... | Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125). |
| Peck..... | Peckwell's Reports. |
| P. & K..... | Perry & Knapp's Reports. |
| P. R. & D..... | Power, Rodwell, & Dew's Reports of Controverted Elections. |
| Rep. Peop. Act, 1867..... | Representation of the People Act, 1867 (30 & 31 Vict. c. 102). |
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ADDENDA.

By the Parliamentary Elections and Corrupt Practices Act (1880, see Appendix), the 36th section of the Rep. Peop. Act 1867, is repealed, "so far as concerns the conveyance of voters within any borough;" but the Scotch and Irish Acts which make the payment of expenses of conveying voters to the poll an illegal payment within the C. P. P. Act 1854, and render the candidate or his agent liable to a penalty for so doing, are left untouched.

So far, therefore, as England and Wales are concerned, payment for conveyance of voters to the poll by the candidate or his agent at a parliamentary borough election is now legal within the limits of the borough: consequently these payments within the borough will stand on precisely the same footing as in counties, and conveyances may be provided for voters by the candidate or his agent, provided no money is given to the voter to pay for conveyances for himself.

The Act, however, still leaves it an illegal payment for a candidate or his agent to pay money to convey voters to the poll outside the limits of the borough. The result is, that giving railway passes which is lawful in counties (see p. 19), would be illegal in boroughs, provided they were given to

voters who on the day of polling were either resident outside, or happened at the time to be temporarily outside the limits of the borough.

It must be remembered that in a close contest such votes would now be of great importance, as since the Ballot Act, voters whose names are on the register, and who have left the borough since they were registered, cannot lose their votes on a scrutiny on the ground of non-residence since registration (see p. 134): before the Ballot Act it was not so, and it was often thought not worth while to bring up non-resident voters, inasmuch as if the majority was small, and the election gained by means of such votes, these votes could be cut off on a scrutiny.

P. 89, line 21.

See addendum to p. 21 *supra*.

P. 89, last line.

By the Parliamentary Elections and Corrupt Practices Act 1880, s. 3, it is provided that at any parliamentary election in Scotland no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows, (that is to say,) that the presiding officer or clerk appointed by the returning officer to attend at a polling station shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions or either of them :—

1. Are you the same person whose name appears as A. B. on the register of voters now in force for the county of [or for the division of the county of], or for the city [or burgh] of or for the district of burghs [as the case may be];

2. Have you already voted, either here or elsewhere, at this election for the county of [or for the division of the county of], or for the city [or burgh] of , or for the district of burghs [as the case may be].

And if any person shall wilfully make a false answer to either of the questions aforesaid, he shall be deemed guilty of a crime and offence within the meaning of "The Ballot Act 1872."

See Addendum to p. 21, supra.

By the Town Councils and Local Boards Act, 1880. s. 1, (see Appendix) any person qualified to elect to a seat on a Town Council is be qualified to be elected though not possessing the property qualification ; but any person qualified under the section ceases to be qualified under the section if he cease to reside for six months within the borough in which he has been elected, and his office becomes vacant unless he was at the time of election, and continues to be, qualified in some other manner.

P. 113, line 15.

P. 233, line 28.

CORRUPT PRACTICES.

CHAPTER I.

BRIBERY, TREATING, UNDUE INFLUENCE, PERSONATION.

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CORRUPT Practices mean *Bribery, Treating, Undue Influence, and Personation.* See the Parl. El. Act, 1868, s. 3.

CORRUPT
PRACTICES.

**CORRUPT
PRACTICES.**

Corrupt
practices at
parliamentary
and
municipal
elections.

“Corrupt practices or ‘corrupt practice’ shall mean bribery, treating, and undue influence, or any of such offences as defined by act of parliament or recognised by the common law of parliament.”

And the Ballot Act, 1872, s. 24.

“The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parl. El. Act, 1868.”

They are severally defined by the C. P. P. Act, 1854, ss. 2, 3, 4, 5. (Extended to the case of municipal elections by 35 & 36 Vict. c. 60, s. 3, post, App.).

“That act, with respect to corrupt practices, strikes at three different classes of such practices. The 2d and 3d sections forbid influencing men by mercenary motives or their love of gain or reward. The 4th section forbids appeals to men’s gluttony or meaner appetites. The 5th section appealing to a man’s fears by means of violence or intimidation.” *Westbury*, Judgments, 195, *per* Willes, J.

Avoidance
of election
by corrupt
practices.

By the C. P. P. Act, 1854, s. 36.

“If any candidate at an election for any county, city, or borough, shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence.” See *Bodmin*, 1 O’M. & H. 121.

BRIBERY.

The election would already have been void at common law. CORRUPT PRACTICES.

As to municipal elections see 35 & 36 Vict. c. 60, ss. 3-11. post App.

And it has been laid down that even a single insignificant act of bribery, clearly proved, will avoid an election : Single act of bribery by agent avoids the election.

“ It seems hard at first sight that a single act of bribery should avoid an election ; but when an act of bribery is committed the whole election of the party bribing is tainted. It is no longer an election : it is utterly void.” Keating, J., *Norwich*, 2 O’M. & H. 41.

But for a single isolated case to upset an election, very strict proof will be required. *Hastings*, 1 O’M. & H. 218, *per* Blackburn, J. But strict proof required.

Bribery, though an offence at common law, has been further defined with great accuracy by a variety of statutes, all of which were repealed by the C. P. P. Act, 1854, which now contains the only statutable definition of bribery : ss. 2, 3. BRIBERY.

S. 2. “ The following persons shall be deemed guilty of bribery and shall be punishable accordingly :—

“ I. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other per-

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son in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election :

“ II. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election :

“ III. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in parliament, or the vote of any voter at any election :

“ IV. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise or endeavour to procure, the return of

any person to serve in parliament, or the vote of any voter at any election : BRIBERY.

“ V. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.”

S. 3. “ The following persons shall be also deemed guilty of bribery, and shall be punishable accordingly :—

“ I. Every voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election :

“ II. Every person who shall, after any election, directly, or indirectly by himself, or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to

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vote or refrain from voting, at any election" (a).

It is the giving or offering money or money's worth with the view of influencing a vote.

Before the
lection.

If given before a person has voted it is *ipso facto* bribery—*i.e.*, the act will of itself be assumed to be bribery unless the contrary be shown by the respondent.

"So here, where the legislature has not introduced the word 'corruptly,' and the natural and reasonable inference from the act is that it was an act done for the purpose contemplated, the legislature has treated it as corrupt without mentioning anything more about it; but in those cases in which it seems intended that the court should not infer the purpose simply and solely from the act, it has introduced the word 'corruptly.'" *Limerick*, 1 O'M. & H. 262.

After the
election.

If given on account of a person having voted or refrained from voting, it must be shown to have been done "corruptly" (b)—*i.e.*, the act itself will not be assumed to be bribery unless it can be shown by the petitioner to be the result of a previous contract or understanding. *Per Lush, J.*,

(a) For the penalties attached to ss. 2 and 3, see "Penalties."

(b) "Corruptly"—*i.e.*, "To influence votes." *Cheltenham*, 1 O'M. & H. 65. "To produce the result which the legislature intended to forbid." *Wallingford*, 1 O'M. & H. 60. "Means contrary to the intention of this act, with a motive or intention by means of it to produce an effect upon the election, not going so far as bribery, but with a motive thereby to influence the election." *Hereford*, 1 O'M. & H. 195.

Brecon, Judgments. In the *Stroud* case, 2 O'M. & H. 184, Bramwell, B., said :—

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“The act says ‘shall corruptly do any such act.’ Now it would be impossible to find that it was corruptly done, unless there had been some previous engagement or something else to make that wrong which otherwise would be right. I rather think that word ‘corruptly’ would not apply to any case where the payment was merely on account of the voting, unless there was some other reason for giving the money. For instance, such a thing as this might happen, if a man voted and got turned out of his situation and went to anybody for charity, and a man said, ‘I am sorry for you, here is a sovereign,’ that would not be a corrupt payment, though it might be said to have been given on account of the man having voted a particular way. Nevertheless, in almost every case where a payment is made in consequence of a voter having voted, it would be a corrupt giving, unless some reason, such as I have suggested, could be given.” See also *Cooper v. Slade*, 27, L. J. Q. B. 451. 6 H. L. C. 746.

Any offer of money or money's worth is equally forbidden. Offer to buy vote.

“Cases of offers of advantage, though these cases have been classed below those of bribery by both the learned counsel: it cannot be supposed an offer to bribe is not

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as bad as the actual payment of money."

Coventry, 1 O'M. & H. 107.

Offer to sell
vote.

On the other hand, an offer by a voter to sell his vote will not, unless proved to have been accepted by the candidate or his agent, amount to bribery, either within s. 3 (*supra*) or at common law. See *Mallow*, 2 O'M. & H. 21.

Evidence of
offer

But the *evidence* required to prove an offer should be stronger than where money has actually passed.

"It is stated in a judgment of my brother Blackburn that the giving of money is a thing which can be proved, and if money is proved to be given, you must search it out; but he states, where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself." *Cheltenham*, 1 O'M. & H. 64. accord. *Mallow*, 2 O'M. & H. 22.

Offer of seat
in Town
Council.

An offer to vacate a seat in a Town Council in favour of a voter is an offer to endeavour to procure an "office" within s. 2 II. *supra* p. 3. See *Waterford*, 2 O'M. & H. 25.

Disqualified
voter may be
bribed.

Money given to a disqualified voter is equally within the terms of the act.

In the *Guildford case*, Willes, J., said:—"It struck me at first, that the law respecting bribery applied only to persons entitled to vote, but that is not so: the law applies also to a person who may be *prima facie* entitled to a vote; it is said expressly in 17 & 18 Vict. c. 102, s. 38, that the word 'voter' shall mean any person who has

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or claims to have a right to vote in the election of a member." *Guildford*, 1 O'M. & H. 15. BRIBERY.

Besides *direct* modes of paying money or offering the same, there are indirect modes of paying or offering money which may be equally held to be bribery. Indirect bribery.

A. *Employment of Electors for hire.*

Before 1867, electors were allowed to be employed by the candidate for the purposes of the election, provided it could be shown that the numbers so employed were reasonable, that non-voters could not be obtained to do the work, that the sums paid were reasonable sums for the amount of work done, and that the work done was *bona fide* and not mere colourable (c) work. Employment of electors (paid).

But by "The Rep. Peop. Act, 1867" (d), s. 11, it was enacted—

"No elector who within six months before or during any election for any county or borough shall have been retained, hired, or employed for all or any of the purposes of the election, for reward by or on behalf of any candidate at such election as agent, canvasser, clerk, messenger, or in other like employment, shall be entitled to vote at such election, and if he shall vote he shall be guilty of a misdemeanour."

(c) "Colourable"—i.e., the fictitious employment of voters, giving them work and making payments to them exceeding the value of the work, and pretending to employ them to do work and then giving them money for not having done it. See *Durham*, 2 O'M. & H. 137.

(d) Ireland: Rep. Peop. (Ireland) Act, 1868, s. 6. Scotland: Rep. Peop. (Scotland) Act, 1868, s. 8.

BRIBERY. This section was clearly framed to prevent any paid elector from voting; in addition, therefore, to the peril which a *candidate* incurred before this statute from the charge of employing *voters* colourably, the *voter* himself is now guilty of a misdemeanour, and his vote would be void on a scrutiny.

“To pay men for what is called watching, but in reality doing nothing. . . . It appears to have been done on both sides, and it is a very mischievous system; it comes within all the mischief of treating, but no statute has as yet been passed rendering it of the same effect as treating. Whether the legislature will think proper to interfere with it hereafter it is not for me to say. It is quite true that where a voter has been employed, no matter whether he has been paid or not—where he has been retained with the expectation that he is to be paid, whether paid or not, his vote would be void.” *Bendley*, 1 O’M. & H. 20.

Under no circumstances, therefore, should paid electors be polled. And evasions of the act, by employing the relations of electors on unreasonable terms, or for mere nominal duties, should also be specially guarded against as likely to endanger the seat of the candidate (e).

“There is no doubt that fictitious employment with the view of paying money would operate as bribery; and I suppose that it is put as if the colourable employment

(e) See also “Scrutiny.”

of the little boy (the son of an elector), BRIBERY.
 and the paying of eleven shillings to him,
 was a corruption of the father." *Cheltenham*, Judgments, 51.

Who are to be considered paid electors within the meaning of the Section :— Who are paid electors.

Paid agents; paid canvassers; paid clerks;
 paid messengers; paid watchers.

Who are not to be considered paid electors within the meaning of the Section :— Who are not paid electors.

(1) Printers :

Printers who also acted as messengers: in the *Northallerton* case it was submitted that the votes of the printers who had also acted as messengers should be cut off as being voters employed in the conduct of the election.

Willes, J., said :—"That might be so if there was a stipulation that a person should be employed as a messenger as well as a printer; but it would not apply to messages incidental to printing, or to any voluntary acting as messenger without a stipulation." *Northallerton*, 1 O'M. & H. 170.

The giving a voter a retainer to act as an agent at an election in order to incapacitate him from voting for either party, is not necessarily bribery. Retainer as agent, to prevent voting for either side.
Cashel, 1 O'M. & H. 289.

(2) Fly drivers :

"With regard to the fly driver, I do not see what that case is at all, I do not understand it; I suppose that flies must be

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employed during an election, and I dare say sometimes more is paid than ordinary during that time. But it is not proved that the respondent's agent was aware that more was paid than was usual; indeed it appears rather the contrary, because he recollected that £1 was charged when the fly was not wanted during the entire day, and he struck off ten shillings; with regard to the fly driver, I see nothing to bring his case within the act of parliament at all." *Cheltenham*, Judgments, 51.

Bills in shop windows, &c

See also *Westminster*, 1 O'M. & H. 90, where it was held that payments made to shopkeepers for exhibiting respondent's bills and placards were not necessarily to be considered corrupt.

Nor would s. 11 seem to include hotel-keepers; nor the ordinary staff of clerks to solicitors when paid by their principals and not returned in the election accounts; nor people employed by the corporation to keep the peace and paid out of the town rates; nor people employed by the returning officer to erect hustings, &c., although the expense of the employment ultimately fell on the candidate. *Ipswich*, K. & O. 387. *Gloucester*, 2 O'M. & H. 62.

Employment of persons by the candidates to keep the peace.

The employment of persons by the candidates nominally for the purpose of keeping the peace, though it does not in itself vitiate the election, has frequently been condemned in strong terms by the election judges.

"I must protest against the employment of such persons at all. The proper course to pursue is to go to the Mayor and communicate to him that there is a pro-

bability of the peace of the town being disturbed, and to tell him that he must perform his duty, and swear in a sufficient number of special constables to preserve the peace." *Per* Martin, B., *Nottingham*, 1 O'M. & H. 246. See also *Tamworth*, 1 O'M. & H. 78. *Salford*, 1 O'M. & H. 140.

It is, however, in an exceptional case allowable to organise a defensive force to resist a force employed by the other side. *Longford*, 2 O'M. & H. 213, post p. 45.

A distinction exists as to the employment of paid electors in parliamentary and municipal elections. In the former case if such electors voted their votes would be void on a scrutiny, and they would be guilty of a misdemeanour; but the election would not be avoided unless it could be shown that such employment amounted to bribery. In the case of municipal elections the mere fact of employing paid electors constitutes an offence against the C. P. M. E. Act, 1872 (35 & 36 Vic. c. 60), ss. 5, 7, post App., and if done with the candidate's knowledge and consent, renders his election void. In addition to this, if the paid elector votes, his vote is void and he is liable to a penalty.

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Distinction
between par-
liamentary
and munic-
ipal elections.

B. *Payment of Voters for loss of Time.*

Payment of
voters for
loss of time.

"Payments, when given to a person for loss of time in coming to deliver his vote, inevitably, it seems to me (I cannot see how there can be any doubt about it), are payments for voting; that would be a distinct and very clear case within the

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very terms of the act." *Taunton*, Judgments, 353. See also 1 O'M. & H. 183. *Staleybridge*, 1 O'M. & H. 67. *Simpson v. Yeend*, 4 L. R. Q. B. 626.

Corrupt
payment of
rates.

C. *Corrupt Payment of Rates.*

Payment of rates for the purpose of influencing the election—i.e., "corruptly."

By "The Rep. Peop. Act, 1867," s. 49,

"Any person, either directly or indirectly, *corruptly* paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter, for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery and be punishable accordingly; and any person on whose behalf and with whose privity any such payment, as in this section is mentioned, is made, shall also be guilty of bribery and punishable accordingly."

"In order to make the payment of a rate for the purpose of influencing the election bribery, you must prove that it was done corruptly, that it was done thereby to influence their votes, which, in my judgment, means to induce them to vote for the person on whose behalf the payment was made." *Cheltenham*, 1 O'M. & H. 64.

"What the legislature prohibited was, the

payment of any rates for the purpose of acquiring an influence over the voters; and a case might arise in the formation of a society for the purpose of paying the rates of all persons who are unable to pay their own rates." *Oldham*, 1 O'M. & H. 165.

"Where S. paid G.'s rate, 'in order that he should get on the register,' and where there was no understanding how he should vote, and the object of paying the rates was that G. should be put on the register, and that he should vote accordingly to what was known to be his own views on politics, Blackburn, J., held it was *not* a corrupt payment of rates. *Oldham*, 1 O'M. & H. 165. See also *Hastings*, 1 O'M. & H. 219.

D. *Barrister's Court Money*—i.e., a payment given for the attendance at the revising barrister's court is not within the *express* terms of the act, but *may* amount to bribery :—

Barrister's
court money

"But where the payment is given for an attendance at the revising barrister's court, it is not within the express terms of the act. It may well be that there should be a payment for an attendance at the barrister's court which should be *bonâ fide* for that purpose and no other, and which is not meant by the act of parliament. From the fact of paying a person money for attending to be put upon the register, it is a matter of inference that doubtless the persons who put the voter on the register expected him to vote for their

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party; no doubt that would be in their minds at the time.

“Doubtless if you were to pay a man direct for being put upon the register, and to offer a reward for every person who would himself come and be registered by the Conservative Association or the Liberal Association as the case might be, it would not be as a matter of law that that would be a bribe for a vote; but it would be a matter of very strong observation, and there would be reasonable grounds for inferring that those who paid people belonging to any particular political party for coming and being put upon the register did expect, as part of what they were paying for, that they were to vote for that party when the election came. It would be a matter of fact, not of law, but the inference would be strong from it.

“When it is merely repaying them what might be called money out of pocket, the loss of a day’s work, the inference is by no means so strong. It might be so or it might not be. In each case it would be a matter of inference looking at the facts, and a very important fact would be, whether or no an election was pending or close approaching. It would require looking at that to see whether it was really or not paid to induce the votes, or whether it was really and *bond fide* a repayment for money out of pocket. I certainly think it would be a wise thing on the part of all people

to avoid making such payments at any time ; because certainly it is always open to the observation and inference that it may be for the corrupt practice of inducing the vote, and may therefore be considered bribery. BRIBERY

“ In the present case, however, we have to go a great deal further than that. I think where it was *bond fide* it would not be a bribe ; where it was intended to induce a vote, which would be a matter to be collected from the whole of the facts, it would be a bribe.” *Taunton*, Judgments, 353.
See also *Hastings*, 1 O’M. & H. 219.

Payment to a freeman to enable him to take up his freedom will not necessarily amount to bribery ; at all events unless an election is imminent. Assisting a freeman to take up freedom.
Beverley, 1 O’M. & H. 145.

E. *Agreement to procure Return.*

A corrupt agreement to procure a return, which was formerly the subject of a distinct enactment, 49 Geo. 3, c. 118 (now repealed), is now by the C. P. P. Act, 1854, s. 2, made bribery.

Agreement to procure return.

In the *Barnstaple case*, 2 P. R. & D. 336, it was proved that the sitting member entered into the following agreement with one C. :—“ I will pay £400 and £1000 within a week after the election at B.” C., it appeared, had been very active in a commission of inquiry held for the borough, and in averting its threatened disfranchisement, and had incurred expenses to the amount of £1400 in so doing ; it was in respect of this bill that the above agreement was made.

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C. swore that it was no part of the understanding that he should endeavour to procure L.'s return; but the committee held L.'s election void. *Rogers on Elections*, 12th ed., 379 (note n).

Payment of one candidate's expenses by another not illegal.

The fair payment, however, by one candidate of the expenses of another if he will stand along with him does not of itself constitute an illegality under the provisions of s. 2, although it constitutes a case calling for a full inquiry. According to the learned judge, however, if the inquiry had shown "that E. had agreed to give H. £5—he might say a farthing in point of law—if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which H. had with the electors of Coventry, and of advancing E.'s influence as a candidate at the election, it would have been bribery, and it would have avoided the election." *Coventry*, 1 O'M. & H. 97.

Subscription to pay them not illegal.

A subscription to pay a candidate's expenses is not illegal. *Belfast*, 1 O'M. & H. 285.

Payment to persons to use their influence.

Where persons who were known to have influence with the Irish voters in a borough, were paid to use their influence to prevent them voting against the respondent, this was held bribery within s. 2. *Bradford*, 1 O'M. & H. 32.

Bribery at test ballot.

In *Britt v. Robinson (Bristol)*, 5 L. R. C. P. 503, where the case stated that on a single vacancy three candidates in the same interest had announced their intention of standing, and a test-ballot was resorted to to determine which of the three should stand, and it was admitted that whoever succeeded in the test-ballot would succeed in the ensuing election, it was unanimously held by the court that bribery

at the test-ballot came under the provisions of s. 2, BRIBERY.
cl. 3, of the C. P. P. Act, 1854.

F. Payment of Travelling Expenses.

Payment of
travelling
expenses.
In counties.

In Counties.—Conveyances may be provided for voters; but no money may be paid to the voter to defray his travelling expenses.

By 21 & 22 Vict., c. 87, s. 1,

“It shall be lawful for the candidate or his agent, by him appointed in writing, to provide conveyance for any voter for the purpose of polling at an election and not otherwise; but it shall *not* be lawful to pay any money or give any valuable consideration to a voter for or in respect of his travelling expenses for such purpose.”

In counties, therefore, it is lawful to give railway tickets or provide conveyances for voters to the poll. Though even in counties, if the persons of whom such conveyances are hired be voters and money payments consequently made to them, the circumstances under which such payments were made, and the *bonâ fides* of the transaction, will be strictly inquired into. *Longford*, 2 O'M & H. 14. The payment, however, of any money to the voter for travelling expenses would be illegal by the statute; and if shown to have been given in excess of the fare—for instance, under colour of payment for refreshment, loss of time, or day's wages—would certainly amount to bribery. In any event it is an illegal payment, and might endanger the candidate's election.

“Practices which once prevailed to an extraordinary extent, by which, under various

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names, gratuities were given to voters under the pretence of paying the expenses to which they had been subjected, but which, in the event, amounted to nothing less than bribes to voters, and amongst other means of giving such bribes for voting, was excessive payment for travelling expenses." *Guildford*, Judgments, 102.

In boroughs. *In Boroughs*.—The payment of expenses for conveying voters to the poll is an illegal payment within the meaning of the C. P. P. Act, 1854 (*f*), with the exception named in the statute forbidding the same.

Rep. Peop. Act, 1867, s. 36: (*g*)

"It shall not be lawful for any candidate, or any one on his behalf at any election for any borough, except the several boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person; and if any such candidate, or any person on his behalf, shall pay any money on account of the conveyance of any voter to the poll, such payment shall be deemed an illegal payment within the meaning of

(*f*) *Seem*, that the illegal payment would render the payer liable to the penalty named in the C. P. P. Act, 1854, s. 23.

(*g*) This impliedly repeals (so far as it relates to boroughs not specially excepted) 21 & 22 Vict. c. 87, s. 1, quoted *supra* p. 19; see *Salford*, 1 O'M. & H. 135.

the Corrupt Practices Prevention Act, 1854" (*h*). BRIBERY.

There is no objection, however, to a candidate or his friends taking voters to the poll in their own carriages, provided no money is paid on account of such conveyance.

"Not that the payment is to be considered to avoid the election if made to a third person not a voter, and not to induce a voter to vote, though such a consequence would follow if the promise were made to a voter, but that it shall be unlawful to pay any money on account of conveyance either to the voter or any other person." *Coventry*, 1 O'M. & H. 110.

In *Cooper v. Slade* (6 H. L. C. 746) at a borough election the agent of the candidate wrote to an out-voter asking him to come and vote, and adding in a postscript, "Your railway expenses will be paid." The voter did afterwards come and vote, and his expenses *bond fide* incurred were paid to him. This was held by the House of Lords to be equivalent to a bargain by the candidate with the voter, "If you will come and vote for me I will give you money, being the amount of whatever expense you may pay for coming to vote," and was held to be bribery within s. 2 of the C. P. P. Act, 1854.

What amounts to a promise to pay expense when incurred.

In the *Bolton case* (2 O'M. & H. 144) the respondent's agent sent circulars to out-voters asking them to come and vote, and enclosing railway passes, exchangeable at the railway station for tickets to Bolton. It was contended that this came within

Offer of railway pass.

(*h*) Scotland: 31 & 32 Vict. c. 48, s. 25. Ireland: 31 & 32 Vict. c. 49, s. 12.

BRIBERY.

the principle of *Cooper v. Slade* (ubi supra); but Mellor, J., held that this did not amount to bribery within s. 2 of the C. P. P. Act, 1854, there being no "valuable consideration" given to the voter, and the latter being under no obligation to the sender of the ticket. He held it, however, to be clearly an illegal act under s. 36 of the Rep. Peop. Act, 1867, though, considering all the circumstances, he did not declare the election void. And this decision was approved by Bramwell, B., *Stroud*, 2 O'M. & H. 185.

As to what will in such a case amount to a promise to pay the travelling expenses of a voter, see further *per* Willes, J., *Coventry*, 105.

Effect on
election.

The question whether the illegal conveyance in boroughs of voters to the poll in hired carriages would in any case avoid an election raises a question of considerable difficulty. The opinions of the learned judges in the *Salford case* (1 O'M & H. 133) and the *Bolton case* (2 O'M. & H. 144) seem to indicate that if carriages were hired and cabs paid for to a very considerable extent, and this wilfully and designedly done either by the candidate or an agent for whom the candidate was responsible, it might amount to a systematic and general violation of the law, and that the illegal act so committed might by common law avoid the election. For instance, if a candidate or his responsible agent were previous to an election to hire a number of conveyances for the purpose of conveying voters to the poll on the polling day, the presumption indicated by the learned judges might fairly arise—viz., that it was wilfully and designedly done to violate the law.

Subsequent legislation also points in the same BRIBERY.
 direction, for by C. P. M. E. Act, 35 & 36 Vic. c. Municipal
 60, ss. 5, 8 (post App.), the payment on account of elections.
 conveyance of voters to the poll is deemed an
 "offence against the Act," and if done with the can-
 didate's knowledge and consent avoids the election.

G. Charity and Charitable Gifts.

Charity.

Charity.

Where the respondent had given a pound to a voter who had previously promised him his vote, and afterwards applied for assistance in distress, Mr. Justice Willes said :—

"The giving of a sovereign was a question of degree: If a sovereign was sent to every person on the register on the occasion of a birth or death in his family by a candidate at an election, it would be hard to come to any other conclusion than that the money was given with the view of obtaining votes. It was a very different question whether an isolated gift of the kind, in a case of great distress, was to be looked upon in the same light."
Windsor, 1 O'M. & H. 2.

Charitable Gifts.

Charitable gifts.

"When I find that charities are distributed in a borough by those who are expecting to contest it as candidates, and are distributed without check by the election agent of the borough, I am not charitable enough to draw any other conclusion than that they do it with the intention of giving the voters money in the hope and

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expectation that it will influence the future election ; and there is the further very great danger attending it, that the knowledge they have been doing so will cause men at the future elections to give their votes in the expectation and hope that they will hereafter receive payment ; when this is brought home to any person, I think it would undoubtedly mean corruption." *Stafford*, 1 O'M. & H. 30.

Paying
money to
release voter
from prison.

As to bribery by paying the debt of a voter to release him from prison so as to enable him to vote : see the *Ashburton case*, Wolf. & Br. 1. *Londonderry*, 1 O'M. & H. 275.

Allowances
to tenants.

The question is one of degree : In the *Windsor case* the candidate some long time before the election gave away about £100 among his tenants, some of whom were voters and some not, and who paid in all about £3000 a year in rent. When asked whether in making the gift he had the election in view, he admitted that to a certain extent he had. Bramwell, B., in his Judgment, says :—

" It is certain that the coming election must have been present to his mind when he gave away these things. But there is no harm in it, if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done on account of the existence of this motive, which by itself would have been an il-

legitimate motive. If the respondent had not been an intending candidate for the borough, and yet had done as he has done in respect of these gifts, there would have been nothing illegal in what he did; and the fact that he did intend to represent Windsor and thought good would be done to him, and that he would gain popularity by this, does not make that corrupt which otherwise would not be corrupt at all." 2 O'M. & H. 90, accord. *Boston, Ibid.*, 161.

Corruptly (*i.e.*, with the intention of producing an effect on the election) giving leave to tenants to shoot rabbits is bribery. *Launceston*, 2 O'M. & H. 129.

H. *Payment to induce Personation.*

Actual payment or promise of money to induce a person to personate a voter amounts to bribery.

In the *Lisburn case* (W. & B. 225) it was held that the payment of money to induce a person to personate his father who was dead, and vote, was bribery, *semble* within s. 2, cl. 3, C. P. P. Act, 1854. *Rogers on Elections*, 12th ed., 380.

In the *Coventry case* evidence having been given as to an attempt to induce a man to personate an absent voter, Mr. Justice Willes remarked that it might, in his opinion, be laid in the petition that an agent of the member had got voters personated, and that that, if established, would be sufficient fraud at common law to set aside the election. *Coventry*, 1 O'M. & H. 105.

BRIBERY.

Giving leave
to shoot
rabbits.

Payment
to induce
personation.

BRIBERY. I. *Wagers.***Wagers.**

There is one form of payment and receipt of valuable consideration after an election which does not seem to be affected in any way by the C. P. P. Act, 1854—viz., wagers. *Rogers on Elections*, 12th ed., 385, and *Allen v. Hearne*, 1 T. R. 56.

**GENERAL
BRIBERY.**

Where bribery exists to such an extent that the corruption is general, the election will be void at common law even where no agency is established.

“If there were general bribery, no matter from what fund, no matter by what person, though the sitting member or his agents had nothing to do with it, that would defeat the election upon the ground that it was not a proceeding pure and free as an election ought to be, but that it was vitiated and corrupted by an influence which, coming no matter from what quarter, had defeated the proceeding, and shown it to be abortive.” *Lichfield*, 1 O’M. & H. 26.

“A man giving a vote for a member of parliament under what the law deems undue influence, gives no vote at all. This is the common law; it depends upon no statute, and it is a consequence of it that if the judge is satisfied that the votes of a considerable number of persons were corrupted and bribed, however innocent the candidate may be, and though himself unconnected with corrupt practices, his election is void by reason of the incapacity of the voters, because of

general corruption, to give valid and effective votes." *Beverley*, 1 O'M. & H. 147. See also *Stafford*, 1 O'M. & H. 234. *Drogheda*, 1 O'M. & H. 257, 258. *Guildford*, 1 O'M. & H. 15. *Bridgewater*, 1 O'M. & H. 115.

GENERAL
BRIBERY.

Lastly, before dismissing the subject of bribery, it is important to notice that it is immaterial at what period any money was given or offered, provided it was with a view of influencing the election.

Time when
act com-
mitted im-
material.

"Much stress was laid upon the time of the revision, as if for a moment the idea seemed to pervade the minds of some parties that bribery is less bribery because it was committed two months or two years before an election.

"Any act committed previous to an election, no matter at what distance of time, with a view to influence a voter at a coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed the day before the election or the day of the election; nay, more, if a man commits bribery on the first week of a parliament, and if he sues for the suffrages of that constituency in the last week of the seven years which precede the dissolution, that act committed six years before can be given in evidence against him, and his seat will not hold an hour." *Sligo*, Judgments, 144. 1 O'M. & H. 302.

The law as to general bribery is now the same in regard to municipal elections. See 35 & 36 Vic. c. 60, s. 6, post. App.

General
bribery at
municipal
elections.

TREATING.

Treating—i.e., giving refreshments to voters at an election. This offence is defined by the C. P. P. Act, 1854, s. 4:—

“Every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways and means on his behalf, at any time, either before, during, or after any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision, to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person, or any other person, to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting, at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of none effect.”

It was argued in the *Youghal case* (1 O'M. & H. 293, 3 Ir. Rep. C. L. 530) that taking the words “candidate at an election,” as defined by 21 & 22

Vict. c. 87, s. 3, the section above quoted did not include acts done by the candidate before the dissolution. The Court, however, did not take that view, and construed the expression to mean any person who shall be elected or nominated.

TREATING.

To avoid the election, the treating must be shown to have been done with a *corrupt* (i) intention. Must be done with corrupt intention.

“The word ‘corruptly’ means ‘with the object and intention of doing that thing which the statute intended to forbid.’
North Norfolk, 1 O’M. & H. 242.

“When that eating and drinking take the form of enticing people for the purpose of inducing them to change their minds, and to vote for the party to which they do not belong, then it becomes *corrupt*, and is forbidden by the statute. Until that arrives, the mere fact of eating and drinking, even with the connection which this supper had with politics, is not sufficient to make out treating.” *Coventry*, 1 O’M. & H. 106.

“If the opening had been proved to the extent of a single pot of liquor being sup-

(i) In the *Bodmin case*, Willes, J., said, that the promise of refreshment *in futuro* would be equivalent to a bribe within the 1st clause of s. 2, 17 & 18 Vict. c. 102, if it were made out, quite apart from any question of corrupt treating, that G. offered valuable consideration to the voters in order to induce them to vote or refrain from voting. *Bodmin*, 1 O’M. and H. 121 and see *Kidderminster*, 2 O’M. & H. 173. It would seem also, after the decision of Lush, J., in the *Brecon* (2) *case*, that to make treating after the election “corrupt,” a previous understanding must have existed. See post p. 35, 36, and supra p. 6, 7.

TREATING.

plied to a single voter by any proved agent of the member under circumstances in which I could be satisfied that it was intended thereby to gain the vote of that man, this election must have been declared void." *Tamworth*, 1 O'M. & H. 83. Accord. *Bradford*, 1 O'M. & H. 36, 39.

See also *Windsor*, 1 O'M. & H. 3, where the candidate had, some three weeks before the election, ordered champagne for the company at an Odd Fellows' dinner: held under the circumstances *not* treating, the society being benevolent, not political.

With the
object of
gaining
popularity.

Also if it be done to gain popularity.

"And I think that, whenever the intention is by such means to gain popularity, and thereby to affect the election, or even if the case is, as very often perhaps it is, that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans and of the persons who take drink, whenever they can get it for nothing (who are always a numerous body), they will become unpopular, and they therefore provide it in order to affect the election, when there is an intention in the mind either of the candidate or his agent to produce that effect, then I think that it is corrupt treating, and the seat ought to be considered vacated." *Wallingford*, 1 O'M. & H. 58 (k), quoted *Mallow*, 2 O'M. & H. 22.

(k) If a publican supply drink to voters without orders and the candidate subsequently pays him, such ratification

It is also to be noticed that the act must be done "in order to induce any voter to vote or abstain from voting;" this intention will, of course, have to be inferred from all the evidence in each particular case. See *per* Bramwell, B., *Stroud*, 2 O'M. & H. 184.

TREATING.

Must be done to induce voter to vote.

It must be borne in mind, however, that the mere giving of refreshments is not a corrupt act *of itself* avoiding the election; although it is an illegal act punishable by a penalty to give them on the nomination (1) or polling day. C. P. P. Act, 1854, s. 23:—

When not corrupt, although illegal on nomination or polling day.

"And whereas doubts have also arisen as to whether the giving of refreshments to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: Be it declared and enacted, that the giving or causing to be given any voter on the day of nomination or day of polling, on account of such voter having polled, or being about to poll, any meat, drink, or entertainment by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of forty shillings for each offence to any person who shall sue for the same, together with full costs of suit."

would probably be equivalent to the original treating. *Per* Willes, J., in evidence before the select committee on Parl. & Mun. El. 445.

(1) The nomination is now by writing only. Ballot Act, 1872, s. 1. post App. As to municipal elections, see 38 & 39 Vic. c. 40, post App.

TREATING.

S. 23 applies
to municipal
elections.

This section applies to municipal as well as parliamentary elections. 35 & 36 Vic. c. 60, s. 3, post App. *Hargreaves v. Simpson*, 4 Q. B. D. 403.

Difference
between ss.
4 and 23.

The difference between these two sections, and how the transgression of them would affect the candidate, has been clearly laid down by the election judges:—

“It is for the petitioner to prove Mr. F. was guilty of acting contrary to the 4th section of this act, otherwise his seat cannot be affected. It may be that votes were given to him which upon a scrutiny would be struck off; it may be that the 23d section of the act of parliament has been violated, but there is nothing in the 23d section to affect the seat or status of the candidate, and he can only be affected by the 4th section. I am clearly of opinion that the argument addressed to me to the 23d section is unavailing; it may prove that a penalty was incurred by giving refreshments upon the polling day contrary to the 23d section, but that has no relation to the 4th section except in so far that the same act is evidence that may be used to establish his proposition and show that something was done by F. that contravenes the 4th section; therefore the question comes to this: Has that been proved to have been done?” *Bradford*, 1 O’M. & H. 35.

Also :—

“While it appears clear to me that the 36th

section of the 17 & 18 Vic. c. 102, does, by reference to the 4th, make corrupt treating by an agent a ground for holding the election to be void, I am equally clear that the 36th section does not so incorporate the 23d section as that an act done by either the member or an agent in violation of the 23d section only shall make the election void, unless that act also falls within the provision of the 4th section."

TREATING.

"If to give a voter something to eat upon the day of polling had been in itself treating, the 23d section would have been unnecessary; the 4th section, dealing with corrupt treating, would have been sufficient to dispose of the case." *Bodmin*, 1 O'M. & H. 122, 123. See also *Carrickfergus*, 1 O'M. & H. 265.

But though an offence against s. 23 is not "treating," for the purpose of avoiding the election, it is so within the meaning of 35 & 36 Vic. c. 60, s. 3, post App., so as to make the penalties against it applicable to the case of municipal elections. *Hargreaves v. Simpson*, 4 Q. B. D. 403.

The practice of giving breakfasts, or giving tickets for breakfasts, which principally exists in county elections, is clearly an illegal act within the meaning of s. 23, and *semble*, if done systematically might furnish strong evidence that it was done *corruptly* within the meaning of s. 4; and in analogy to general corruption might avoid the election, more especially if any voters, who had not promised, or were doubtful voters, afterwards

TREATING. polled in favour of the candidate at whose expense they breakfasted. See the remarks of Martin, B., in "Election Accounts."

In the *York County, W. Riding (Southern Division)*, case, one of the allegations of treating was that breakfasts on the polling-day had been systematically given by the respondents. The case involving a scrutiny, the respondents were enabled to re-criminate, alleging (amongst other things) that breakfasts had been as systematically given on the other side. In the course of the trial all evidence with reference to the breakfasts was withdrawn.

In delivering his judgment, Martin, B., made these most important remarks:—

"It is perfectly clear that there has been conduct on both sides to which both sides had no idea that any objection could be taken; that is, entertainment was given to the voters upon the day of polling: both sides seem to have given it, and I think it was highly honourable that it was not insisted on against the successful candidates. It was the course that a gentleman would take; having done it himself, he would not put it forward as illegal on the part of his opponents. Nevertheless, it was an illegal act, and I think a person standing in the position I do ought to say so. We must decide upon the act of parliament. I strongly recommend at any future election, that the parties look to the law, and the law alone, and take it as their guide; and however hard the law may be, and I am

far from saying that it is not a hard law, TREATING.
 to comply with it, and not put their seats
 in jeopardy by doing apparently innocent
 acts, but which, by the express operation
 of this act of parliament, are declared to
 void their capacity to be elected." *York*
County, W. Riding (Southern Division),
Judgments, 304.

Reading sections 4 and 23 together, it would be
 advisable to avoid the giving of any refreshments
 on the nomination or the polling day even to those
 voters who have actively and gratuitously worked
 on those days for the purposes of the election, al-
 though, according to the judgment of Martin, B.,
 in the *Bradford case*, 1 O'M. & H. 39, and in the
Westminster case, 1 O'M. & H. 91, the giving re-
 freshments to committee men and voters actually
 doing work on those days is not necessarily
 corrupt.

For similar reasons the practice of organising
 canvasses at public-houses is to be avoided. See Organising
 canvasses at
 public-
 houses.
 remarks of Willes, J., *Tamworth*, 1 O'M. & H. 86.

In the *Brecon case*, where, with the sitting
 member's knowledge, *after* the election, meat and
 drink were given to voters who had voted for the
 sitting member, it was decided that to make the
 fact corrupt treating within the meaning of the C.
 P. P. Act, 1854, ss. 2 and 4, it must be connected
 with some act done before the election. After the
 election.

"The treating which the act calls corrupt as
 regards a bygone election must be con-
 nected with something which preceded
 the election—must be the complement
 of something done or existing before,

TREATING.

calculated to influence the voter while the vote lies in his power ; an invitation given before to an entertainment to take place afterwards, or even a promise to invite, or a practice of giving entertainments after an election which it may be supposed the voters would calculate on most if followed up by the treat afterwards, give it the character of corrupt treating." *Per* Lush, J., *Brecon*, Judgments, 2 O'M. & H. 45 ; approved by Grove, J., *Poole*, 2 O'M. & H. 125.

Treating not
confined to
electors.

It is to be noticed that the offence of treating is not confined to the giving of refreshments to electors, the words being "any person."

"The treating of non-electors may be illegal and corrupt just as much as the treating of voters." *Longford*, 2 O'M. & H. 15. *Bewdley*, 1 O'M. & H. 19, 58, & 59.

Women.

Women may be the subject of treating, with a view to their influencing the votes of their fathers, brothers, sweethearts, &c. *Tamworth*, 1 O'M. & H. 86.

GENERAL
TREATING.

General treating is the supply of refreshments in such excessive quantities, with reference to the election, as to produce a general corruption of the constituency. In this case the election would be void at common law, even if no agency were proved.

"Had it been proved that there was general drunkenness throughout the borough, or any great part of it, though it could not be traced distinctly to the member or an

agent of his, if it produced obvious demoralisation to such an extent which must have influenced the election by producing the vote of one or more of the constituency in favour of B. who would otherwise have voted for P., if it had been established, I should have considered a strong case had been made to be rebutted on the part of the respondent." *Tamworth*, 1 O'M. & H. 85.

GENERAL
TREATING.

The law as to general treating is now the same in regard to municipal elections. See 35 & 36 Vic. c. 60, s. 6, post App.

This offence is defined by C. P. P. Act, 1854,
s. 5:—

UNDUE
INFLUENCE

“ Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten the infliction of, by himself, or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon

UNDUE
INFLUENCE.

any voter either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanour, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of £50 to any person who shall sue for the same, together with full costs of suit."

This statute has prohibited, in the clearest way, the use of any undue influence whatever, in order to secure, if possible, that a voter may exercise his own judgment, on being canvassed, without any selfish motives interfering with his decision. Section 5 applies both to acts or threats exercised in order to induce a voter to vote contrary to his inclination, or to abstain from voting, or on account of a voter having voted or refrained from voting.

As to this section Mr. Justice Willes said (*Lichfield*, 1 O'M. & H. 25):—

"The proper definition of that undue influence, which was dealt with in 17 & 18 Vic. c. 102, s. 5, is using any violence or threatening any damage, or resorting to any fraudulent contrivance to restrain the liberty of a voter, so as either to compel or frighten him into voting or abstaining from voting otherwise than he freely wills."

In arriving at the conclusion what is really the intimidation forbidden by the statute, the provisions contained in s. 2 of the act should be considered with the view that, under ordinary circumstances,

whatever it is bribery to promise it is intimidation to threaten the deprivation of.

UNDUE
INFLUENCE.

“Reading the 5th section by the light thrown upon it by the 2d, I can have no doubt that that of which it would be bribery to promise the enjoyment, it is, in this case at least, and with reference to those circumstances, intimidation to threaten the deprivation. The thing answers to common sense, and it seems to be within the intention of the legislature, whether you take the general language of the 5th section by itself, or whether you refer for interpretation to the provisions of the 2d clause of the 2d section.” *Westbury*, 1 O’M. & H. 52.

Such acts and threats include equally—

A. *Withdrawal of Custom.*

Withdrawal
of custom.

“The legislature, in the 5th section, has used language which makes it undue influence to practice intimidation, directly or indirectly, with intent to influence the vote of a single voter; whether that voter be the person ill-treated, or whether the ill-treatment be violence or damage done by the removal of custom, or business, or employment, is immaterial; if it is done with a view to affect a voter or interfere with the free exercise of the franchise, it is within the prohibition of section 5.” *Blackburn*, Judgments, 11.

B. *Eviction by Landlord.*

Eviction by
landlord.

“Undoubtedly, when the election is over, a

UNDUE
INFLUENCE.

man may employ whom he pleases ; but to make use of it as a threat during an election to withdraw his custom in order to influence the election is, I think, as clearly an infraction of the 5th section of the act as it would be if a landlord were to say to his tenant, ' If you do not vote for so-and-so I will turn you out of your house.' " *Reg. v. Barnwell*, 5 W. R., per Campbell, C. J., 558.

Threat of
eviction.

And where evidence was offered that the respondent had, after a previous election (six years before), evicted a number of voters, his tenants, for not having voted for him, this was held admissible evidence of intimidation as being a threat of further evictions under similar circumstances. *Windsor*, 2 O'M. & H. 90. But such intimidation did not suffice by itself to avoid the second election, there being no evidence of any repetition or revival of the threat, or that its effect continued to operate on the minds of the tenants. *Ibid.*, p. 91.

What constitutes
threat of
eviction.

Legitimate
influence of
landlord,
what.

As to what amounts to a threat of eviction, see the *Petersfield case*, 2 O'M. & H. 94.

Where a landlord said to a number of his tenants, " If you can vote for my friend, Captain T., I shall be delighted if you will do so ; if you cannot vote for him, at all events stay at home and do not vote against him ; " this was held not to exceed the bounds of legitimate influence. *Galway*, 2 O'M. & H. 54.

Spiritual
intimidation.

C. *Spiritual Intimidation.*

In the *Galway (County)* case it was ruled by

Keogh, J., that the clergy were justified in exerting their legitimate influence over the minds of their congregations; but he stated that—

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INFLUENCE.

“Undue influence would be used if ecclesiastics make use of their powers to excite superstitious fears or pious hopes; to inspire, as the object may be best promoted, despair or confidence; to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of eternal happiness—that good or evil which is never to end. . . . He had to consider the case very fully at Drogheda (Judgments, pt. ii. p. 320), and there the election was declared void, not only by reason of general intimidation, but because of undue ecclesiastical influence brought home to the sitting member and his agent in one particular case.” Judgments, 66, and see post App.

And the same learned judge in the *Galway (Town) case* (Judgments, 347, &c.) said :

“If a single elector, the most miserable free-man that crawls about this town, had been refused the rites of the churches in order to compel him to vote, or because he had voted, or because a member of his family had voted in a particular way, I would have avoided this election without the slightest hesitation.” Quoted in the *Galway (County) case*, 2 O’M. & H. 57.

“In the proper exercise of his influence on electors, the priest may counsel, advise, What is undue spiritual influence.

UNDUE
INFLUENCE.

recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he think fit, throw the whole weight of his character into the scale; but he may not appeal to the fears, or terrors, or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not, for instance, threaten to excommunicate, or to withhold the sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter. If he does so with a view to influence a voter, or to affect an election, the law considers him guilty of undue influence. As priestly influence is so great, we must regard its exercise with extreme jealousy, and seek by the utmost vigilance to keep it within due and proper bounds." *Per Fitzgerald, J., Longford, 2 O'M. & H. 16. See also Tipperary, 2 O'M. & H. 31.*

Threats by
fellow-work-
men.

D. *Threats by Fellow-Workmen.*

"I can conceive cases in which fellow-servants ill-treat one another, and even expel one another from the common place of employment, and they, unquestionably, are guilty of the offence against which the

undue-influence clause of the C. P. P. Act is specially directed." *Blackburn*, 1 UNDUE INFLUENCE.
O'M. & H. 204.

E. *Dismissal from Employment.*

Dismissal
from em-
ployment.

"Now, whether I look upon this as a question of common sense or a question of law, or as a matter of inference from the evidence which has been produced, I am obliged to come to the conclusion that expelling or wrongfully discharging voters shortly before a parliamentary election, in consequence of their politics being different from those of their employers, does, at least under the circumstances of the case, amount to undue influence, both direct and indirect, under s. 5." *Blackburn*, Judgments, 16. See also *Westbury*, 1 O M. & H. 51.

F. *Abduction of or Fraud on Voter.*

Abduction
of or fraud
on voter.

This section also prohibits using open force, or abducting, or what is vulgarly called "bottling" a voter, and the exercising any trick or fraud upon the voter.

"I will take that which is probably the strongest case—that is, whether the old man G. was taken away by force and prevented from voting, so as to bring the case within s. 5 of the act of parliament." *York County, W. Riding (Southern Division)*, Judgments, 303.

In the *Gloucester case* (1873), where cards had been sent round to voters containing directions how to vote, *Blackburn, J.*, ruled that if a fraudulent

Cards sent
round cal-
culated to
mislead
voters.

UNDUE
INFLUENCE.

intention could be inferred from the wording on the cards, it would bring the case under s. 5 of the C. P. P. Act, 1854, whether the voter had actually been influenced thereby or not. Thus, if there was a fraudulent device of any sort to prevent a voter voting a certain way, even though unsuccessful, it would amount to a fraudulent device to interfere with the free exercise of the franchise within s. 5 of the C. P. P. Act, 1854.

E.g., if a voting card was intended to induce persons to believe that they could not vote for A, and that their vote would only be valid if they put a cross against the name of B.

Agent inciting mob.

Animating a mob by exhorting them not to allow the other side to vote, if done by any agent, is enough to prevent the seat being held, even though it does not amount to general intimidation. See *Stafford*, Judgments, 295. *Semble*, an agent inciting a mob to prevent persons voting is within the literal meaning of s. 5.

In the *Stafford case*, 1 O'M. & H. 229, the respondent was unseated, it being proved that an agent of his incited the mob to molest and terrify voters on the day of the election, and it was further proved that five or six voters were by this means actually deterred from voting.

Intimidation by mob paid by agent.

A fortiori, where persons are hired and introduced from other places into the county or borough by a candidate, or his agent, for the purpose of intimidating the opposite party, this will avoid his election. *Longford*, 2 O'M. & H. 12.

Defensive force may be hired in extreme case.

It does not amount to intimidation to introduce bodies of men from other places as a defensive force, if done merely to prevent those who would

otherwise vote for a candidate from being intimidated, but it is a highly dangerous step to take, and one which should only be adopted under extreme circumstances. See *Longford*, 2 O'M. & H. 12. UNDUE INFLUENCE.

A mere attempt on the part of an agent to intimidate a voter, even though unsuccessful, will avoid an election. *Northallerton*, 1 O'M. & H. 173, *per Willes, J.* Attempt to intimidate.

Intimidation of any kind, including spiritual intimidation, and riot, will render an election void at common law, if it can be shown to have been so general as to influence the votes of the body of voters, and consequently to prevent the real political feeling of the constituency from being ascertained, and agency need not then be proved. See *per Bramwell, B., North Durham*, 2 O'M. & H. 156. GENERAL INTIMIDATION.

“In order to avoid an election on the ground of intimidation and undue influence, either it must be shown that the rioting or violence was instigated by the member or his agents, for whom he is responsible, or it must be shown it was to such an extent as to prevent the election being an entirely free election.” *Stalybridge*, 1 O'M. & H. 72. See also *Salford*, 1 O'M. & H. 140.

“If the evidence affected this return, it seems to me that it would affect it by reason of the common law, which, of itself, renders an election carried by violence, or force, or intimidation, void, because the freedom of election is violated, and persons are General rio

GENERAL INTIMIDATION.

prevented from freely exercising their franchise and giving their votes." *Cheltenham*, 1 O'M. & H. 64.

"General intimidation, so that you may say it is evident the election was not a free one; in that case, though it is not brought home to the agent, the election would not be good by the common law of parliament." *Stafford*, Judgments, 295.

"If rioting takes place to such an extent that ordinary men, having the ordinary nerve and courage of men, are thereby prevented from recording their votes, the election is void by the common law." *Nottingham*, 1 O'M. & H. 246.

Intimidation substantially on side of the defeated candidate.

In the *Dudley case*, Grove, J., said:—

"I by no means say that if a case had been made out of the violence being wholly or substantially on the side of the defeated candidate, and if I was satisfied that the result of the poll was a fair expression of the opinion of the constituency, I should have come to this conclusion; (*m*) but the case, taking it in the most favourable view for the respondent, stops far short of this." 2 O'M. & H. 121. (*n*)

(*m*) *I.e.*, that the election was void at common law on the ground of rioting.

(*n*) In the *North Durham* and *Dudley cases* the respondents, on being unseated, were not disqualified from standing again and being re-elected, on the ground that the elections were void owing to general intimidation and rioting, in which neither the candidates themselves nor their agents took any part.

In the *Drogheda case* (1 O'M. & H. 254) it was contended that where the respondent polled an actual majority of the registered electors, the election could not be set aside on the ground of electors being prevented from polling by a mob, inasmuch as if they had all polled the result must have been the same. This contention, however, was overruled. Keogh, J., said:—

GENERAL INTIMIDATION.

Effect of general intimidation where actual majority of constituency polled.

“Take it that a candidate has by the most legitimate means obtained the votes of nine-tenths of the constituency in his favour, yet it is of vital importance to the public weal that the remaining tenth should be able to record their votes and to express their opinions.”

“General bribery will invalidate an election, even though it be not directly traceable to the candidate—I say that general treating will invalidate an election, even though it be not directly traceable to the candidate; and I say above all things that general intimidation and undue influence, whether it is lay or ecclesiastical, whether it is the ecclesiastic of our persuasion or the ecclesiastic of another; whether it is the Protestant Episcopalian minister, or the Presbyterian minister, or the Roman Catholic priest, or the minister of any other of those innumerable sects which, I believe, are to be found existing over the face of the world, will upset every election at which it is practised.”
Galway (County), Judgment, *per* Keogh, J., & 2 O'M. & H. 56.

General spiritual intimidation.

GENERAL INTIMIDATION.

The law as to general intimidation is now the same in regard to municipal elections. See 35 & 36 Vict. c. 60, s. 6, post App.

PERSONATION.

Personation is a corrupt practice within the meaning of the Parl. El. Act, 1868, by the Ballot Act, 1872; and if shown to be committed by an agent of the sitting member, vacates the election and forfeits the seat. *Per* Blackburn, J., *Gloucester*, 2 O'M. & H. 64. The statutable definition of personation is contained in the same section of that act as follows, s. 24 (extended to the case of municipal elections by 35 & 36 Vict. c. 60, s. 3, post App.) :—

Definition of personation.

“The following enactments shall be made with respect to personation at parliamentary and municipal elections : A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation, who, at an election for a county or borough, or at a municipal election, applies for a ballot-paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot-paper in his own name.” And see also *supra*, p. 25.

When aiding in personation by agent will not invalidate election.

Where there were two persons of the same name, one of whom only was entitled to vote, but the respondent's agent urged the other one to vote,

thinking him (as he deposed) to be the man entitled to do so, which he did, Blackburn, J., said, <sup>PERSONA-
TION.</sup> it was obvious in point of law that he was not a party to the offence of personation. *Gloucester*, 2 O'M. & H. 62. See also similar case, *Ibid.*, p. 64.

CHAPTER II.

AGENCY.

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Who is an agent.

AN agent is a person authorised by the candidate to act on his behalf in affairs connected with the election, and the candidate, *as regards his seat (a)*, is as liable for acts committed by his agent as if he himself had been personally concerned therein; although the agent may not only have exceeded the authority committed to him, but have acted in opposition to the express commands of the candidate.

How far principal liable for agent.

So extreme, in fact, is the liability of the candidate for his agent, that the relation between them

(a) The distinction between the liability of a candidate for the acts of his agent as regards his seat, as distinguished from his liability with respect to penalties, is well pointed out in *Felton v. Easthope*, Sitt. after Trinity Term, 1822, referred to in "Rogers on Elections," 12th ed., 390.

"If an agent bribes voters with or without the knowledge and direction of his principal, it will *avoid the election*; the principal is to that extent liable, *but not so* in an action for penalties; it must be proved to be done with the knowledge and authority of the principal." *Per* Abbott, C. J.

not analogous to that existing at common law AGENCY.
between principal and agent.

“The rule of law has long been established, and has been ratified by acts, as I think, in parliamentary matters, we are not to consider the strict rule of common-law agency generally established to this extent, that a person is responsible for his agent in all that he does within the scope of his authority, but is not responsible for anything that he does beyond the scope of his authority. There is one exception in the case of the sheriff, but I may pass that by. So that the common rule of law would be, if you employed a man to do an honest thing and he chose to commit a crime, you would never be responsible criminally, but beyond that you would not be even responsible civilly for the crime committed when the instructions you gave him were to act as an honest man.

“But in parliamentary election law it has long been established that where a person has employed an agent for the purpose of procuring his election, he, the candidate, is responsible for the act of that agent in committing corruption, though he himself did not only not intend or authorise it, but though *bonâ fide* he did his best to hinder it.” *Taunton*, Judgments, 354; and see also the Report in 1 O.M. & H. 182, 184, 185.

The liability of the candidate for the acts of Relation
between

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principal
and agent
similar to
that between
master and
servant.

his agent has close resemblance to that of the master for his servant.

“It is in point of fact making the relation between a candidate and his agent the relation of master and servant, and not of principal and agent.” *Westminster*, 1 O’M. & H. 95.

The candidate is answerable for the acts of his agent in the same way as a master is answerable for the acts of his servant done in the course of his employment, whether lawful or not, notwithstanding a prohibition may have been given to him by his master.

“The relation of master and servant imposes upon the master a liability for an unlawful act done by the servant in the course of his employment, notwithstanding a prohibition which may have been given to him by his master; notwithstanding that the instant before an accident occurred he had impressed upon his servant or coachman the necessity for driving with the utmost possible care, if the next moment that man disobeys the order received from his master and inflicts an injury upon another, the master is responsible for it; and why? Because the relation of master and servant exists between them and creates this liability.” *Wigan*, Judgments, 205; 1 O’M. & H. 191.

“Fifthly, it was said, that although H. was an agent of the respondent, and did intimidate under 17 & 18 Vict. c. 102, s. 5, he did not intimidate as an agent, and that there-

fore his principal is not bound; and it was said by way of illustration of that view, that although a master is answerable for a negligent act of his servant in the course of his employment, he is not answerable for his wilful and spiteful act for his own purpose, not in the course of his employment; and that might be carried further, because a master would not be liable to some person run over by his carriage driven by his coachman upon some errand of his own, entirely out of the scope of the employment of the master. There can be no doubt of that; but I might put, on the other hand, a variety of other cases in which a principal is liable, even civilly, for an act of his agent which he never intended, and at which he is exceedingly displeased: the case of a bank held liable for the fraud of a manager or clerk; the case of a person who employs a man to navigate his boat for hire held liable for the infringement of a ferry by the boatman without his authority and against his will; and a case which occurred in London in the rivalry between the omnibuses, where the proprietor of an omnibus was held liable for the wilful act of his coachman in cutting in before another omnibus and injuring the vehicle and the horses, and, I think, one of the passengers, for the purpose of getting a fare, having in his mind at the time the compound motive of effecting his own spiteful desire, and, at

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the same time, of getting before the other omnibus to get a fare for his master. This case (*Limpus v. General Omnibus Company*, 32 L. J., Ex. 34) was very much considered in the Exchequer Chamber, and was held by a large majority of the judges to be a case of liability. Or I might put even the more apposite case of a man employing another to steer or assist in the management of his vessel in a race, where, by the act of one of the crew, wholly unauthorised by the employer, a foul takes place in wrong of a rival, and the employer's vessel wins; in such a case, even if it were proved to demonstration that, notwithstanding the foul the race would have been won by the vessel on board of which the misconduct took place, it would surprise one if, by any rule, either of honour or of law, the prize was given to the vessel which was in fault; no innocence of the employer could have any effect upon his loss." *Westbury*, 1 O'M. & H. 54. See also *per* Martin, B., *Norwich*, 1 O'M. & H. 10.; and *Boston*, 2 O'M. & H. 165, where the respondent was unseated for acts done by his agent without his knowledge and contrary to his express written directions.

Agency
when ter-
minated.

Agency terminates at the close of the election, except so far as the candidate may himself personally direct an agent to act. See "Practical Suggestions." *Salford*, 1 O'M. & H. 136-139, and *King's Lynn*, 1 O'M. & H. 208.

A candidate has been held answerable for acts committed by a person employed in a subordinate capacity by the agent for the purposes of the election on his own responsibility to the same extent as if those acts had been committed by the superior agent himself.

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Sub-agent.

“The extent to which a person is agent differs accordingly to what he is shown to have done. I take it that an agent employed so exclusively (*i.e.*, having money intrusted to his care), as is shown here, does make the candidate responsible not only for his own acts, but also for the acts of those whom he, the agent, did so employ, even though they are persons whom the candidate might not know or be brought in personal contact with.

“The analogy which I put to Mr. G. in the course of the case I think is a strong one; but it would convey my meaning more to a lawyer than to the general public—the analogy of the liability of the sheriff for the under-sheriff, where he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under-sheriff employs, and not only responsible for acts done by virtue of the mandate, but also for acts done under colour of the mandate; matters which have been carried very far indeed in relation to the sheriff” (*b*). *Bewdley*, 1 O’M. & H. 19.

(*b*) See *Stalybridge*, 1 O’M. & H. 69.

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“If an agent, although he may be no agent to the candidate, be employed by the agent of a candidate, he is a sort of subordinate agent, and if he is employed by persons who have authority to employ people to further the election of a particular individual, and in the course of canvassing makes use of a threat or a promise, such an act will make the candidate liable, however innocent the candidate may be, or however careful the candidate may have been to avoid such conduct.

“But the judge must be satisfied that the man, when he was acting, was acting as the agent for furthering the election of a particular candidate.” *Barnstaple*, 2 O’M. & H. 105, 106.

Limited
agency.

With respect to agents acting with a limited capacity, or with an authority limited by their superior, certain modifications as regards the liability of the candidate have been allowed. Thus—

“On the other hand, the act might be limited to the case of a person who was employed to canvass a particular voter or voters *only*, and then that person would be one whose authority being limited to such voter or voters, his illegal acts in respect of *others* would not affect the member, because he would be only an agent in the *particular limited capacity*.” *Bodmin*, 1 O’M. & H. 120.

“But I do not think that being asked to can-

vass two distinct and specific persons would make him a general agent, so that for anything else he might do the candidate would be made responsible." *Hereford*, Judgments, 111; 1 O'M. & H. 195.

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Asking a master to go round and canvass his workmen would not be an authority to canvass "beyond the scope of the workmen in his employ," and with respect to anything done by him as to voters other than these workmen there would be no agency. *Westbury*, 1 O'M. & H. 47. See also *North Norfolk*, 1 O'M. & H. 237.

If candidates coalesce, the agents of the one become the agents of the other.

Joint agency.

"It happens that in this case W. and L. have stood jointly; they have chosen to what we commonly call coalesce; they united in a canvass, and in fact have made each one agent for the other; and they have chosen to stand or fall together: consequently if any corrupt act is shown to be done by an agent appointed by one member it will affect both: such are the consequences of a coalition. A candidate is not only responsible for his own individual agent, but, having made a coalition, he becomes responsible for the acts of the agent of the other candidate with whom he has coalesced. W., therefore, as far as those matters are concerned, is exactly in the same position as L. If a corrupt act is brought home to the one, both are unable to hold their seats." *Norfolk*

Candidates who have coalesced, each liable for the acts of the other's agents.

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(*Northern Division*), Judgments, 269 ;
1 O'M. & H. 240.

The *Norwich case* was decided on the same principles. 23 L. T. Rep., N. S. 703 ; 2 O'M. & H. 39.

Not respon-
sible for acts
before
coalition.

But where candidates have coalesced one will not be responsible for acts of bribery committed by the agents of the other before the coalition, of which at the time of the coalition he had no knowledge. *Malcolm v. Parry* (*Boston 2nd case*), 10 L. R. C. P. 168. *Aliter*, if he had such knowledge (*Ibid.*, p. 176) as in that case he would be taken to have adopted the acts of bribery.

What is
evidence of
joint
candidature.

Where the respondents had issued a canvassing card in the following terms :—" B. election—The honour of your vote and interest is respectfully solicited on behalf of Mr. K. & Mr. V., the Liberal candidates : " and joint accounts had been sent in to the candidates and joint payments made on their behalf, this was considered sufficient evidence of a joint candidature. *Bridgewater*, 1 O'M. & H. 113.

Where the respective agents for two candidates jointly attended to the registration, but during the election did not act in concert, it was held that there was *not* sufficient joint action to constitute mutual agency. *Tamworth*, 1 O'M. & H. 83.

Proof of
bribery
before
agency.

As to allowing proof of bribery before proof of agency, see post Practical Suggestions.

Agency, how
inferred.

What constitutes Agency; how it is proved; and what acts amount to proof.

There is not much difficulty in deciding who are the principal agents of a candidate ; by 26 & 27 Vic. c. 29, s. 52, post App., payments at an election

must be made by an authorised agent. Such an authorised agent for election expenses would render the candidate liable for an act done by him in the course of the election. *Windsor*, 1 O'M. & H. 8.

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Authorised agent for election expenses.

Besides the agent for election expenses, there are other paid persons whose names would appear in the detailed statement of election expenses under 26 & 27 Vic. c. 29, s. 4.

The mere fact of their names appearing in that statement as *paid* by the candidate for the purposes of the election would probably be held as sufficient evidence of their agency, unless they were merely employed and paid in some subordinate capacity, such as that of a messenger or bill-sticker, &c. The candidate may be also bound by acts committed in the course of the election by other persons on his behalf, though not named in the election accounts and *unpaid*.

Paid agents for the purposes of the election.

Agency of this description is inferred from the conduct of the alleged agent with reference to the election.

Inference of agency.

“It is a result of law to be drawn from the facts in the case and from the acts of individuals.” *Sligo*, Judgments, 145.

“For an agent to bind another it is not necessary that there should be any payment: it is only necessary that the act done by the agent upon which the question arises whether it is to bind the principal should be an act done by the procurement of the principal.” *Westbury*, 1 O'M. & H. 55.

“There is always a great difference in my view in the degrees of agency. As you go lower down you require more dis-

AGENCY.

tinctly to show that the act was done by a person whom the candidate would be responsible for. As you come higher up it is more as if the candidate had done it himself." *Hereford*, Judgments, 109.

"A candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object." *Wakefield*, 2 O'M. & H. 103; approved by *Lawson*, J., *Galway*, 2 O'M. & H. 199.

"No one can lay down a precise rule as to what would constitute evidence of being an agent. Every instance in which it is shown that either with the knowledge of the member or to the knowledge of his agent who had employment from him a person acts at all in furthering the election for him, in trying to get votes for him, is evidence tending to show that the person so acting was authorised to act as his agent.

"It is by no means essential that it should be shown that a person so employed in order to be an agent for that purpose is paid in the slightest degree or is in the nature of being a paid person." *Bewdley*, 1 O'M. & H. 17.

And the agency of a particular person may be inferred from the fact of his having acted as agent at an election a short time previously. *Waterford*, 2 O'M. & H. 2.

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Agency may be inferred from agency at previous election.

A candidate's wife, if she interfere in the election, is *ipso facto* his agent. *Hastings*, Judgments, 235.

A candidate's wife is his agent.

Any act, however trifling, is evidence of agency, and an aggregate of isolated acts will by their cumulative force constitute agency: though no one of them alone, if severed from the others, might be conclusive.

What constitutes agency.

Exempli gratia:—

1. Being a member of the committee (c).
2. Canvassing alone, and with or without a canvassing-book (d).
3. Canvassing in company with the candidate (e).

(c) This depends upon the size and nature of the committee. Being merely a member of a large committee of six or seven hundred people would only be a *very slight* element in the case; being a member of a committee consisting of a limited number, formed for the special purpose of conducting the election, in whom faith and confidence were placed by the candidate, and between whom there existed some privity, would be a *very strong* element in the case. See *Westminster*, 1 O'M. & H. 92; *Windsor*, 2 O'M. & H. 89; and *Dublin*, 1 O'M. & H. 272.

(d) Canvassing alone is also a question of degree. It would be slight evidence of agency if done without request, but it would be strong evidence if either a canvassing-book was furnished to the canvasser by the candidate or his agents, or if he made a return of his voluntary canvass to the candidate's committee and that canvass was adopted by them. *Stalybridge*, 1 O'M. & H. 70; *Lichfield*, 1 O'M. & H. 25; *Bolton*, 2 O'M. & H. 140. Canvassing may be either by asking a man to vote for the candidate for whom you are canvassing, or by begging him not to go to the poll, but to remain neutral and not vote for the adversary. *Westbury*, 1 O'M. & H. 56.

(e) This, again, is a question of degree. Should a candidate invite a person to accompany him on his canvass, to in-

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4. Attending meetings and speaking on behalf of the candidate (*f*).
5. Bringing up voters to the poll.

What does
not amount,
per se, to
agency.

Messengers.

What, per se, does not constitute Agency.

- A. Being employed as a messenger :—

"I do not think that B., who was merely a card messenger, can be said to have been an agent." *Windsor*, 1 O'M. & H. 3.

Messengers
of volunteer
committee.

- B. Being messenger of a volunteer committee :—

"But in such a case as this, where I am convinced that they were real *bond fide* volunteers, voters acting for themselves,

introduce him to the electors and to point out their residences, it would be strong evidence of agency; but should he merely accompany the candidate as one of a numerous body who are in the habit of following the candidate on his canvass, it would be but slight. "I do not apprehend that agency is established by merely showing that a particular person has gone about with a candidate and has canvassed. Canvassing will only afford premises from which a judge, discharging the functions of a jury, may conclude that agency is established. If a gentleman comes down to canvass a borough, and, as a kind of guarantee for his respectability, is introduced to the voters by persons of station and position in the borough, I am of opinion that such canvassing, though it would be properly called canvassing, would not be canvassing within the meaning of those words from which I am to infer the agency existed. I draw in my own mind the widest distinction between the kind of canvassing in the presence of the candidate, and canvassing of such a character as to constitute agency." *Shrewsbury*, 2 O'M. & H. 36; see also *Stroud*, 3 O'M. & H. 11; and *Durham*, 2 O'M. & H. 136.

(*f*) In the *Galway (County) case* (1872) it was held that where a meeting was called together with the knowledge of the candidate for his support, it made, "every bishop, every priest, from the highest to the lowest, who acted at those meetings so called into existence by N.'s own acts, his agents, for the purposes of this election; and by their acts, words, and writings he must be bound." Judgment of Keogh, J.; reported also 2 O'M. & H. 53; and see also *Limerick*, 1 O'M. & H. 262.

not selected by the member or chosen by him at all, but really *bond fide* in a business-like manner, the voters of the district choosing sober and respectable men in whom they had confidence to be the head of their own department and acting together, a messenger who is sent by one of them is not so directly connected with the candidate or any of his recognised agents, as to make him responsible for his misconduct in offering a bribe." *Stalybridge*, 1 O'M. & H. 72.

"There might be put, proceeding still in the same direction, cases in which a person, although nominally and popularly a canvasser, would really be no agent at all. You might put the case, which I believe is not uncommon, and which I could conceive might take place very easily in a county or other large constituency, without authority, properly speaking, to canvass at all; a person who, though called a canvasser nominally, was in substance not a man whose influence was relied upon, but was rather, upon the facts, a mere messenger sent round to know how the voters in the district meant to give their votes—a person sent round rather for information for his employer than with a view to his exercising any influence, either personal or by his powers of persuasion, upon the persons whom he was sent to ask how they meant to vote. And I can conceive

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that it would be very unjust, with reference to one of the latter class of persons, unless he were really proved to be an agent by other evidence, to make the member liable for what he did, to hold, in fact, that he was an agent at all." *Bodmin*, 1 O'M. & H. 120.

Canvasser
or independent
association.

- C. Being canvasser for an independent association :—Where one D. was a person who canvassed for a society called "The Working Man's Conservative Association." This society was assumed to be formed of working men, but next to nothing was subscribed to it by working men; all the rest of the funds of the society came from a subscription of £60 from the respondent himself (he withdrew from the society, however, on becoming a candidate), two subscriptions from his partner, and various other sums from persons who subscribed, expecting the money to be expended in promoting their political views. The funds of this society were spent in canvassing persons to vote for the respondent; but the evidence was, that it was an independent agency, and that this body was acting on its own behalf:

Martin, B., in his judgment, said, that upon this statement of facts, he should not hold D. to be an agent. *Westminster*, 1 O'M. & H. 91.

In the *Wakefield case* (2 O'M. & H. 102), it was

proved that the respondent was vice-president of a certain society, that he spoke at meetings of that society, that many of the members of that society were to his knowledge active partisans of his, and were actively canvassing for him, that there were certain rooms belonging to this society, which might in one sense be called committee rooms, but which were not committee rooms in the old sense of being occupied by a certain fixed committee. These rooms were placarded with the respondent's name, and at them business in connection with the election was transacted. These facts would *prima facie* bring the case within the law of agency, and would be sufficient to satisfy a tribunal that the respondent had put himself, or allowed himself to be in the hands of certain persons, or had made common cause with them so as to make himself liable if they, for the purpose of promoting his election, committed acts of bribery.

D. Being employed to be objector-general at the revision of lists of voters :—

Objector at revision of lists.

“W. was the person employed by him (*i.e.*, the agent) to attend to the register, or to be the ‘objector-general,’ as he was called, that gave him no authority to bind Mr. G. by an act of bribery.”
Wigan, Judgments, 205 ; 1 O’M. & H. 191.

Where a person not an agent of the candidate has unknown to the candidate done an act amounting to bribery, the candidate will not be held to have ratified the act so as to create agency, unless at the time he knows the character of the act. Thus,

Ratification of person not an agent.

AGENCY. where B. had made illegal payments, not being then the candidate's agent, and the candidate not knowing for what the payments had been made repaid him, this was held no such ratification as to make B. his agent. *Tammworth*, 1 O'M. & H. 81.

Fraudulent agent.

Before, however, concluding the chapter on agency, it may be useful to state that no candidate can be held responsible for the corrupt acts of his agent, if he can show that his agent, though acting for him for the purposes of the election, has in reality sold himself to, and been in treaty with, the other side. See the evidence of Willes, J., before the Select Committee on Parl. and Mun. El. 441.

"If a member employs an agent, and that agent, contrary to his wish and contrary to his direction, commits a corrupt act, the sitting member is responsible for it; but where he employs an agent, and the agent treacherously or traitorously agrees with the other side, then if he does a corrupt act it would not vacate the seat unless it is proved that the corrupt act was at the special request of the member himself or some untainted and authorised agent of the member who directed the act to be done. The distinction is pretty obvious, and I mention it to avoid any difficulty or doubt that there might be hereafter from its being supposed that I have said anything more than I do say. I say that if M. was a treacherous agent he loses the power of upsetting the seat by reason of his unauthorised acts of

corruption; it would require actual proof of authority in order to make it so. It is a very different affair if a man, being an agent, has been tricked by the other party into committing a corrupt act, he himself honestly still intending to act as an agent." *Per* Blackburn, J., *Stafford*, 1 O'M. & H. 230. AGENCY.

CHAPTER III.

PENALTIES (a).

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WHERE a judge has reported to the House of Commons upon an election petition that a candidate has been *personally* guilty of bribery at such election, the following penalty will attach to the candidate, that is to say:—

PENALTIES
(PARLIAMENTARY)
ON CANDIDATE.

Personally
guilty of
bribery.

First. Election of that candidate void.

Secondly. Incapable of being elected or of sitting in the House of Commons for seven years from the date of his being found guilty.

Thirdly. Incapable for seven years of being registered as a voter or voting.

Fourthly. Visited with civil disability for seven years of holding any municipal office,

PENALTIES.

any judicial office, or being a justice of the peace.

Parl. El. Act, 1868, s. 43 :—

“Where it is found by the report of a judge upon an election petition under this act that bribery has been committed by or with the knowledge and consent of any candidate at any election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his being found guilty; and he shall further be incapable during the said period of seven years—

“(1) Of being registered as a voter, and voting at any election in the United Kingdom; and

“(2.) Of holding any office under the act of the session of the fifth and sixth years of the reign of his Majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, or any municipal office; and

“(3) Of holding any judicial office, and of being appointed and of acting as a justice of the peace.”

For the penalties of this section to attach to a candidate it is necessary that he should have been *found* guilty by the judge's report; it is not sufficient that the judge states in his report facts from which such guilt may be inferred. *Grant v. Overseers of Pagham*, 3 C. P. D. 80.

PENALTIES.

Report must find candidate guilty.

Where a judge has reported that a candidate has been *personally* guilty of treating or undue influence, that candidate's election shall be void; and he shall be incapable of being elected to represent the same constituency during the parliament then in existence.

Personally guilty of treating or undue influence.

Where a judge has reported that a candidate has been guilty of or abetted in personation, that candidate shall be incapable of being elected or sitting in parliament for such county or borough during the parliament then in existence.

Personally guilty of personation.

Where a judge has reported that a candidate *by his agents* has been guilty of any corrupt practice, that candidate's election shall be void, and he shall be incapable of being elected to represent the same constituency during the parliament then in existence.

Guilty of any corrupt practice by his agents.

C. P. P. Act, 1854, s. 36:—

“If any candidate at an election for any county, city, or borough, shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in parliament for such county, city, or borough, during the parliament then in existence.”

PENALTIES.

Ballot Act, 1872, s. 24 :—

“The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parl. El. Act, 1868. If on the trial of any election petition, questioning the election or return for any county or borough, any candidate is found by the report of the judge, by himself or his agents, to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at such election of the offence of personation by any person, such candidate shall be incapable of being elected or sitting in parliament for such county or borough during the parliament then in existence.”

In the *Coventry case*, 1 O'M. & H. 105, Willes, J., considered that it might be laid in the petition that an agent of the member had got votes personated, and that, if established, would be sufficient fraud at common law to set aside the election.

Parl. El. Act, 1868, s. 46 :—

“For the purpose of disqualifying, in pursuance of the thirty-sixth section of The Corrupt Practices Prevention Act, 1854, a member guilty of corrupt practices, other than personal bribery, within the forty-third section of this act, the report of the judge (b) on the trial of an election petition shall be deemed to be substituted for the declaration of an election com-

(b) “Report of the Judge,” see *Norwich case*, 6 L. R. C. P. 147.

mittee, and the said section shall be construed as if the words 'reported by a judge on the trial of an election petition' were inserted therein in the place of the words 'declared by an election committee.'"

PENALTIES.

Where a candidate personally employs a canvasser or agent who, within the last seven years, has, to his knowledge, been convicted of any corrupt practices by a competent legal tribunal, or been reported guilty of any corrupt practices by—

Knowingly
employing a
corrupt
agent.

A. A parliamentary committee, or

B. By a judge appointed to try an election petition, or

C. Commissioners appointed under 15 & 16 Vict. c. 57,

that candidate's election is void (c).

Parl. El. Act, 1868, s. 44.

"If, on the trial of any election petition under this act, any candidate is proved to have personally engaged at the election to which such petition relates, as a canvasser or agent for the management of the election, any person knowing that such person has, within seven years previous to such engagement, been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a committee of the House of Commons, or by the report of the judge upon an election

(c) There is no provision in this event against a candidate being re-elected for the same constituency during the parliament then in existence.

PENALTIES.

petition under this act, or by the report of commissioners appointed in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-seven, the election of such candidate shall be void."

"Personal
engagement," what.

It is sufficient to bring the case within this section if the agent be appointed with the candidate's knowledge and consent: a personal interview with him is not necessary. *North Norfolk*, 1 O'M. & H. 238. Followed in *Norwich*, 2 O'M. & H. 40.

Who is an
agent within
the section.

As to the nature of the employment as agent, Blackburn, J., said:—

"I proceed further to consider what the nature of the employment of the scheduled person is to be. It must be 'as a canvasser or agent for the management of the election.' I think the sort of agency pointed at is not by any means confined to a paid agent, but I think he must be an agent for the management of the election. I do not think that it is necessary that he should be an agent for the management of the whole election; it is enough if he is an agent for part of the election: he must be not simply an agent who might be employed to such an extent as might make the candidate answerable for corrupt practices committed by him, but he must be employed in the way of managing a portion of the election." *North Norfolk*, 1 O'M. & H. 239.

By the Parl. El. Act, 1868, s. 45, the following penalties will attach to any person other than the candidate found guilty of bribery in any proceeding in which, after notice of the charge, he has had an opportunity of being heard, that is to say :—

PENALTIES.
OF PERSONS
OTHER THAN
THE
CANDIDATE.
Guilty of
bribery in
any proceed-
ing where he
has had an
opportunity
of being
heard.

First. Incapable of being elected or sitting in the House of Commons for seven years from the date of his being found guilty.

Secondly. Incapable for seven years of being registered as a voter or voting.

Thirdly. Visited with the civil disability for seven years of holding any municipal office, any judicial office, or being a justice of the peace.

With regard to the meaning of the words “an opportunity of being heard,” Lord Blackburn, in the *Bendley* case, 1 O’M. and H. 176, said :—

“The act speaks of ‘an opportunity of being heard,’ and I think that does not merely mean that kind of opportunity which a witness has who is called up upon the spur of the moment, and who is subject to cross-examination, but it means an opportunity of being heard when he has had a fair warning of the charge, and is asked to meet it and be heard by himself or his counsel.”

But an opposite opinion was expressed in the *Waterford* case :—

“What is the effect of the report of C. for corrupt practices? It is a judgment of guilt against him for a misdemeanour, just as if he had been tried at the assizes and found guilty of larceny; it is a civil

PENALTIES.

disqualification of him for any office or public employment, and it even deprives him of his franchise as an elector." 2 O'M. & H. 25.

See also Report from the Select Committee on Corrupt Practices, ordered by the House to be printed, June 23rd, 1870.

Reading the above section with section 6 of the C. P. P. Act, 1854, it would seem that the view taken by Lord Blackburn must be the correct one.

Voter convicted of bribery, treating, or undue influence, to have name expunged from the list of voters.

Another parliamentary penalty will attach to a person who is a voter criminally convicted of the misdemeanours of bribery or undue influence, or who has a judgment in a penal action recovered against him for bribery, treating, or undue influence—viz., that the revising barrister may not only expunge him from the list of voters or disallow his claim, but, in addition, may insert his name in a list of persons disqualified for corrupt practices. C. P. P. Act, 1854, s. 6.

"Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge

PENALTIES (CIVIL).

the same therefrom, or shall, in case such ^{PENALTY} person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled 'The List of Persons disqualified for Bribery, Treating, or Undue Influence,' which last-mentioned list shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published (d)."

With reference to votes being void owing to corrupt practices, see "Scrutiny."

The briber, *i.e.*, a person offending against the provisions of s. 2 of C. P. P. Act, 1854, is, by that section, "liable to forfeit the sum of £100 to any person who shall sue (e) for the same, together with full costs of suit." ^{PENALTY (CIVIL).}
Bribery.

And the penalty of £100 can be sued for cumu- ^{Cumulative penalties.}

(d) *Seem*, this would not include personation.

(e) Actions or suits in respect of the above offences must be commenced within a year after the offence has been committed. C. P. P. Act, 1854, s. 14. The action or suit must be brought in one of the superior courts. C. P. P. Act, 1854, s. 9. And under s. 35 parties to the suit are compellable to give evidence, though such evidence is not to be used against them in any criminal proceeding instituted under the act.

What the form of declaration is to be in such actions is specified by 26 and 27 Vict. c. 29, s. 6.

When the proceedings in an action may be stayed, see 26 & 27 Vict. c. 29, s. 7.

PENALTIES. latively, *i.e.*, once in respect of each separate act of bribery, *Milnes v. Bale*, 10 L. R. C. P., 591, and cases cited. The question in such a case is whether all the acts charged against the defendant constitute more than one offence, or all go to make up one offence only.

Agency in
action for
penalties.

Though acts of bribery by an agent will affect the candidate's seat, though done without his consent, the rule is different in an action for penalties: here knowledge or authority of the principal must be proved. See note *supra*, p. 50.

The bribee, *i.e.*, a person offending against the provisions of s. 3 of C. P. P. Act, 1854, is, by that section, "liable to forfeit the sum of £10 to any person who shall sue (*f*) for the same, together with the full costs of suit."

Treating
(candidate
only liable).

The *candidate* is the only person liable for the pecuniary penalties for treating, by s. 4 of C. P. P. Act, 1854. By that section "he shall forfeit the sum of £50 to any person who shall sue (*f*) for the same, with full costs of suit."

Undue in-
fluence.

A person who unduly influences, by s. 5 of C. P. P. Act, 1854, is "liable to forfeit the sum of £50 to any person who shall sue (*f*) for the same, together with full costs of suit."

Returning
officer wil-
fully contra-
vening sta-
tute.

By Ball. Act, 1872, s. 11, every returning officer, presiding officer, and clerk, who is guilty of any act wilfully against the statute, can be sued by any person aggrieved for £100, 30 & 31 Vic. c. 102, s. 50, post App. Parl. El. Act, s. 48, post App. See also 7 and 8 Will. 3, c. 25, s. 6; 2 Will. 4, c. 45, s. 76; 6 Vict. c. 13, s. 97.

(*f*) See *ante*, note. (*e*)

A returning officer is also liable to be reprimanded for misconduct by the House of Commons, and even to be committed to prison; see *Middlesex*, 2 Peck. 28, 29, *Winchelsey*, *Glanville*, 23, *Great Grimsby*, 1 Peck. 74-76.

The Ballot Act, 1872, casts by implication a duty on the presiding officer at a polling station to deliver to the voters ballot papers marked with the official mark; also to be present at the polling station during the election, so that the voters before depositing their ballot papers can show to him the official mark as required by the statute: an action will lie for breach of these duties by a party who has lost the election through votes given for him being thrown away through want of the official mark (*Pickering v. James*, 8 L. R. C. P., 489) though no malice is alleged. The Court in that case were divided as to whether the statute cast on the presiding officer the further duty of ascertaining before a voter deposits a vote in the ballot box whether the official mark is on the paper.

If the above duties have been delegated by the presiding officer to one of the clerks, the action will lie against the latter and not against the presiding officer, the clerks not being appointed by him but by the returning officer. *Ibid.*

By C. P. P. Act, 1854, ss. 2, 3, both the briber and the bribee offending against the provisions of the respective sections are "guilty of a misdemeanour, and in Scotland of an offence punishable by fine and imprisonment."

By C. P. P. Act, 1854, s. 5, persons using undue

PENALTIES.

Action against presiding officer for breach of duties at the poll.

Or against clerk at polling booth.

PENALTIES (CRIMINAL).

Bribery.

Undue influence.

PENALTIES. influence are guilty of a misdemeanour, and in Scotland of an offence punishable by fine and imprisonment. See *Longford*, 2 O'M. & H. 12, 13.

The prosecution, whether by indictment or information, must be commenced within one year after offence committed. C. P. P. Act, 1854, s. 14, 26 & 27 Vict. c. 29, s. 5.

No indictment for bribery or undue influence can be tried at quarter sessions. C. P. P. Act, 1854, s. 10.

The form of indictment or information, both for bribery and undue influence, is specified by 26 & 27 Vict. c. 29, s. 6.

Personation. By 6 Vict. c. 18, s. 83, persons who knowingly personated voters were guilty of a misdemeanour; that section is now repealed, and by s. 24 of Ball. Act (g), 1872, the offence of personation and of aiding, abetting, or counselling personation is made a felony, and whoever, in a parliamentary or municipal election, *applies* for a ballot-paper, in the name of a living, dead, or fictitious person, or who, having voted before, *applies* in his own name at the same election for a ballot-paper, is deemed guilty of personation.

Prosecution of, &c.

By this section the offence is complete the moment the elector *applies* for a ballot-paper, and even if a person *attempted to apply* for a ballot-paper, he could, on the indictment for the felony, be found guilty of the misdemeanour—*i.e.*, the attempt to commit a felony.

Although 6 Vict. c. 18, s. 83, is repealed, the other sections with reference to the proceedings

(g) Scotland : Ballot Act, 1872, s. 26.

which may be taken by the returning officer and the agents to detect personation at the poll are still in force, see 6 Vict. c. 18, ss. 81, 85-89. Under these sections the returning officer is empowered to order a person accused of personation into custody immediately after such person shall have voted. It would be advisable therefore for the returning officer not to exercise the summary power entrusted to him by these sections until the personator has actually voted in accordance with the mode prescribed in rule 27 of Ball. Act, 1872.

Any irregularity, however, which might be committed by the agent to detect personation, or the returning officer, with reference to proceedings under 6 Vict. c. 18, would be no bar to a prosecution being instituted in the regular way under s. 24 of Ball. Act, 1872; it is, in fact, under that section the duty of the returning officer to institute one.

It is still competent for a person to be indicted for wilfully making a false answer to the questions put to him at the time of tendering his vote, and so to be found guilty of a misdemeanour under 6 Vict. c. 18, s. 81.

Making false answer to questions at voting.

Seemle, although a felony, that the prosecution must be commenced within one year after the offence, 17 & 18 Vict. c. 102, s. 14; 26 & 27 Vict. c. 29, s. 5. An indictment for personation may be tried at the quarter sessions.

By the Ball. Act, 1872, Gen. Rule xl., for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot-papers, an order may be obtained to inspect *rejected* ballot-papers. See also *Reg. v. Beardsall*, 1 Q. B. D. 452.

Inspection for purpose of prosecution.

PENALTIES.

Prosecution
instituted by
Attorney
General.

By the Parl. El. Act, 1868, s. 16, on the report of a judge, the Attorney-General may institute a prosecution against persons reported guilty of corrupt practices in the same way as he was authorised by 26 & 27 Vict. c. 29, s. 9, to institute a prosecution against persons found guilty of bribery or treating (*h*) by the report of a committee or commission of inquiry into corrupt practices at any election.

Witness en-
titled to a
certificate of
indemnity.

During the trial of an election petition before a judge (Parl. El. Act, 1868, s. 33), or proceedings before commissioners appointed under 15 & 16 Vict. c. 57, no witness is excused from answering any question relating to any corrupt practice connected with any election forming the subject of inquiry on the ground that the answer may criminate or tend to criminate him. But "if he shall answer (*i*) every question relating to the matter . . . which he shall be required . . . to answer, and the answer to which may criminate or tend to criminate him, he shall be entitled (*k*)

(*h*) Treating is not a statutable misdemeanour, so that the only prosecution which the Attorney-General could institute would be one for a misdemeanour at common law, and it is doubtful if such a prosecution has ever been attempted. If endeavour were made to render any one guilty of treating criminally liable, the count would probably be substantially one of bribery, the means whereby the vote was sought to be influenced being, instead of money, meat or drink.

(*i*) The word answer in this section means "answer truly." *Reg. v. Hulme*, 5 L. R. Q. B. 377.

(*k*) In the *Bridgewater Election Commission case*, where the question was raised in the Court of Queen's Bench whether a *mandamus* will lie to Election Commissioners to grant a certificate of indemnity to a witness to protect him from legal proceedings, and it was urged that the decision of the commissioners on the subject was final, the rule for a *mandamus* was made absolute by Cockburn, C. J., Blackburn,

... to receive a certificate," under the hand of the judge or the commissioners (as the case may be), to that effect, and such certificate shall stay all proceedings against him, by information or indictment, for any offence under the C. P. P. Acts. PENALTIES

See 26 & 27 Vict. c. 29, s. 7:

"No person who is called as a witness before any election committee, or any commissioners appointed in pursuance of the act of the session holden in the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-seven, shall be excused from answering any question relating to any corrupt practice at, or connected with, any election forming the subject of inquiry by such committee or commissioners, on the ground that the answer thereto may criminate or tend to

Mellor, Lush, JJ., concurring; Cockburn, C. J., in giving judgment, saying, "that looking at the whole of the examination, and where the witness was treated with great unfairness in his examination, and with great injustice in the refusal of the certificate, he thought that a *prima facie* case had been made out which called upon the judges, in the exercise of their jurisdiction, to make the rule absolute for a *mandamus*, in order that, if necessary, the question might be further considered." The Attorney-General then entered a *nolle prosequi*.

In *Reg. v. Buttle*, it was attempted to prove the guilt of a prisoner on an indictment for perjury for evidence given before the election judge, by producing the true evidence given by the prisoner on the same subject before the commissioners appointed under 15 and 16 Vict. c. 57.

But it was held that true answers before the Election Commissioners could not afterwards be used against a witness to support an indictment for perjury committed before another tribunal, such as an inquiry into the validity of an election before a judge. 1 L. R., C. C. R., 248.

PENALTIES.

criminate himself: provided always, that where any witness shall answer every question relating to the matters aforesaid which he shall be required by such committee or commissioners (as the case may be) to answer, and the answer to which may criminate, or tend to criminate him, he shall be entitled to receive from the committee, under the hand of their clerk, or from the commissioners, under their hands (as the case may be), a certificate stating that such witness was, upon his examination, required by the said committee or commissioners to answer questions or a question relating to the matters aforesaid, the answers or answer to which criminated or tended to criminate him, and had answered all such questions or such question; and if any information, indictment, or action be at any time thereafter pending in any court against such witness for any offence under the Corrupt Practices Prevention Acts, or for which he might have been prosecuted or proceeded against under such acts, committed by him previously to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, the court shall, on production and proof of such certificate, stay the proceedings in such last-mentioned information, indictment, or action, and may, at its discretion, award to such witness such

PENALTIES (CRIMINAL).

costs as he may have been put to in such information, indictment, or action, provided that no statement made by any person in answer to any question put by or before such election committee or commissioners, shall, except in cases of indictment for perjury, be admissible in evidence in any proceeding, civil or criminal" (1).

The corrupt payment of rates by the Rep. Peop. Act, 1867, s. 49, subjects both the payer and the payee to the same penalties with which bribery is visited.

By the Ballot Act, 1872, s. 3:—*Any person*

offences in
respect of:
(a) Nomination-paper

- | | | |
|--|---|-------------------|
| <ol style="list-style-type: none"> 1. (a) Forging (b) Fraudulently defacing (c) Fraudulently destroying (d) Delivering to the returning officer forged, knowing the same | } | Nomination-paper, |
|--|---|-------------------|

- | | | |
|--|---|---|
| <ol style="list-style-type: none"> 2. (a) Forging (b) Counterfeiting (c) Fraudulently defacing (d) Fraudulently destroying | } | Ballot-paper or official mark on any ballot-paper, |
|--|---|---|

(b) Ballot paper.

3. Supplying a ballot-paper without authority,
4. Fraudulently putting into the ballot-box a paper other than the authorised ballot-paper,

(1) In the case of *Reg. v. Hamilton, Kinglake and Lovibond*, a witness L. declined to answer a question on the ground that he might criminate himself by his reply—a pardon under the Great Seal was tendered to him. The witness, however, still declined on the ground that a *qui tam* action was pending against him for penalties. Com. Dig. v. 5 (Pardon) was quoted in support of the witness.

Hannen, J., ruled that the pardon applied to proceedings on the part of the crown only, and that the action to which

PENALTIES.

5. Fraudulently taking a ballot-paper out of the polling-station,

(c) Ballot-box.

6. (a) Destroying
 (b) Taking
 (c) Opening
 (d) Interfering with

} Without due authority, any ballot-box or packet of ballot-papers then in use,

is guilty of a misdemeanour.

Any person offending is liable, if

(d) Infringement of secrecy.

- (a) A returning officer, or officer, or clerk in attendance at a polling-station, to imprisonment for a term not exceeding two years, with or without hard labour.
 (b) Any other person, to imprisonment for a term not exceeding six months, with or without hard labour.

An attempt to commit the offence is punishable in the same manner as the offence.

In an indictment or other prosecution for an offence in relation to

- (a) Nomination-papers,
 (b) Ballot-boxes,
 (c) Ballot-papers,
 (d) Marking-instruments,
 (e) Counterfoils,

the property in the aforesaid may be stated to be in the returning officer at the election.

Any of these offences would not be punishable on summary conviction before justices.

after the pardon the witness can remain liable was a liability to a debt or to a civil suit. 22 L. T. Rep. N. S. 316.

This view was afterwards concurred in by Cockburn, C. J., and Blackburn and Mellor, JJ., who also ruled that the privilege of refusing to answer questions on the ground that they tend to criminate is that of the witness alone, and no other party to the suit can take any advantage therefrom. 22 L. T. Rep. N. S. Q. B. 335.

As to obtaining inspection for the purposes of such prosecutions of the ballot-papers, counterfoils, and tendered and spoilt ballot-papers, see *Reg. v. Beardsall*, 1 Q. B. D. 452.

PENALTIES
 Inspection of
 ballot-paper
 &c., for pur-
 poses of pro-
 secution.

By s. 4. of the act,

Any officer, clerk, and agent in attendance at a polling-station,

Communicating, before the poll is closed (except for some purpose authorised by law), any information as to the name or number on the register of any elector who has or has not applied for a ballot-paper, or voted at that station, or as to the official mark ;

Any officer, clerk, and agent in attendance at the counting of votes,

- (a) Attempting to ascertain the number on the back of a ballot-paper at such counting ;
- (b) Communicating any information obtained at such counting as to the candidate for whom a vote is given ;

Any person whatsoever

- (a) Interfering or attempting to interfere with a voter when marking his vote ;
- (b) Attempting to obtain in the polling-station any information as to the candidate for whom any voter in such station is about to vote or has voted ;
- (c) Communicating at any time to any person any information obtained in a polling-station as to the candidate for whom any voter in such station is about to vote or has voted ;

PENALTIES.

- (d) Communicating at any time to any person any information as to the number on the back of the ballot-paper given to any voter at a station;
- (e) Directly or indirectly inducing a person to display his ballot-paper after he has marked the same, so as to make known to any person the name of any candidate for or against whom he has marked his vote;

ILLEGAL
PAY-
MENTS (m).

is liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Communi-
cating infor-
mation.

On a charge against a personation agent under the above section, for communicating information as to how a voter has voted, an admission of the defendant that he did disclose such information is sufficient to support a conviction without showing that the voter in fact voted at all. *Reg v. Unkles*, 8 Ir. Rep. C. L. 50.

Communi-
cating infor-
mation, what.

To incur penalties for "communicating information" it is not enough merely to put it in the power of another to acquire the information, it is necessary to show that the intelligence actually reached the mind of the person to whom the communication is made. Thus, where a personation agent marked in a copy of the burgess roll the names of the voters who had obtained ballot-papers, and left it in his candidate's committee-room, but there

(m) With respect to bills, charges, and claims on a candidate in respect of an election, sent in contrary to ss. 2 and 3 of 26 & 27 Vict. c. 29, see "Practical Suggestions (Election Accounts)."

was no evidence that it had been seen by any one, this was held insufficient to warrant a conviction. See *Stannanought v. Hazeldine*, 4 C. P. D. 191.

PENALTIES.

By C. P. P. Act, 1854, s. 23 (n), any person supplying refreshment to voters on the days of nomination or polling shall forfeit forty shillings for each offence to any person who shall sue for the same, together with full costs of suit (o).

Supplying refreshment to voters on polling or nomination days.

By C. P. P. Act, 1854, s. 7, any person providing cockades, ribbons, or other marks of distinction, shall forfeit forty shillings for every such offence to every person who shall sue for the same, together with full costs of suit; and all payments made on account of cockades, &c., bands or flags, shall be deemed illegal payments.

Providing cockades, ribbons, &c.

By Rep. Peop. Act, 1867, s. 36, the payment of expenses of conveying voters in boroughs to the poll is an illegal payment within the meaning of the C. P. P. Act., 1854, and, *semble*, would render the payer liable to the penalty of forty shillings.

Conveying voters to the poll.

By the Rep. Peop. Act, 1867, s. 11, if a paid elector vote, he shall be guilty of a misdemeanour. See "Corrupt Practices and Scrutiny."

OTHER PENALTIES.

Paid electors voting.

By s. 81 of 6 Vict. c. 18, any person wilfully making a false answer to the returning officer or his deputy to the two questions which may be asked of a voter when he comes to the poll, shall be deemed guilty of a misdemeanour. See "Scrutiny."

Willfully making false answer to returning officer.

(n) See "Corrupt Practices."

(o) *Semble*, that all the penalties imposed on illegal payments would be subject to the same limitations and would be recovered in the same manner as the penalties imposed on corrupt practices.

PENALTIES.

Returning
officer acting
as agent.

By the Rep. Peop. Act, 1867, s. 50:

“No returning officer for any county or borough, nor his deputy, nor any partner or clerk, or either of them, shall act as agent for any candidate in the management or conduct of his election as a member to serve in parliament for such county or borough; and if any returning officer, his deputy, the partner or clerk, or either of them, shall so act, he shall be guilty of a misdemeanour” (*p*).

By Ballot Act, 1872, s. 11, the above section applies to any returning officer or his deputy, appointed by him in pursuance of the Ballot Act, 1872, or his partner or clerk. Ireland, 31 & 32 Vict. c. 49, s. 13.

Making pay-
ment on
behalf of
candidate
otherwise
than
through
authorised
agent.

By 26 & 27 Vict. c. 29, s. 2:

“No payment (except in respect of the personal expenses of a candidate), and no advance, loan, or deposit shall be made by or on behalf of any candidate at an election, before or during or after such election, on account of or in respect of such election, otherwise than through an agent or agents, whose name and address, or names and addresses, have been declared in writing to the returning officer on or before the day of nomination, or through an agent or agents to be appointed in his or their place, as herein provided; and any person making any such payment or advance, loan or deposit, otherwise than through

(*p*) With regard to this section, see the Scotch statute, 2 & 3 Will. 4, c. 65, s. 36.

such agent or agents, shall be guilty PENALTY of a misdemeanour, or in Scotland of an offence punishable by fine and imprisonment. It shall be the duty of the returning officer to publish, on or before the day of nomination, the name and address or names and addresses of the agent or agents appointed in pursuance of this section."

By the same act, s. 4 :

"A detailed statement of all election expenses As to publication of statement of election expenses. incurred by or on behalf of any candidate, including such excepted payments as aforesaid, shall within two months after the election (or in cases where, by reason of the death of the creditor, no bill has been sent in within such period of two months, then within one month after such bill has been sent in), be made out and signed by the agent, or, if there be more than one, by every agent who has paid the same (including the candidate in case of payments made by him), and delivered with the bills and vouchers relative thereto to the returning officer; and the returning officer for the time being shall, at the expense of the candidate, within fourteen days, insert, or cause to be inserted, an abstract of such statement, with the signature of the agent thereto, in some newspaper published or circulating in the county or place where the election was held; and any agent or candidate who makes default in delivering to the

PENALTIES.

returning officer the statement required by this section, shall incur a penalty not exceeding five pounds for every day during which he so makes default; and any agent or candidate who wilfully furnishes to the said returning officer an untrue statement, shall be guilty of a misdemeanour, or in Scotland of an offence punishable by fine and imprisonment; and the said returning officer shall preserve all such bills and vouchers, and during six months after they have been delivered to him, permit any voter to inspect the same on payment of a fee of one shilling."

PENALTIES
ON CON-
STITUENCY.

Where a judge under the Parl. El. Act, 1868, s. 15, reports that corrupt practices have extensively prevailed in any constituency at the election to which the petition relates, both Houses by a joint address may pray her Majesty for an inquiry by means of a commission under the 15 & 16 Vict. c. 57. A joint address by both Houses to the same effect may also be presented under the circumstances stated in the Parl. El. Act, 1868, s. 56:—

"If upon a petition to the House of Commons, presented within twenty-one days after the return to the clerk of the Crown in Chancery in England, or to the clerk of the Crown and Hanaper in Ireland, of a member to serve in parliament for any borough or county, or within fourteen days after the meeting of parliament, and signed by any two or more electors of such borough or county, and alleging

PENALTIES ON CONSTITUENCY.

PENALTY

that corrupt practices have extensively prevailed at the then last election for such borough or county, or that there is reason to believe that corrupt practices have there so prevailed, an address be presented by both Houses of Parliament, praying that such allegation may be inquired into, the Crown may appoint commissioners to inquire into the same, and if such commissioners in such case be appointed, they shall inquire in the same manner and with the same powers and subject to all the provisions of the statute of the 15 & 16 Vict. c. 57."

Where a commission, appointed under the provisions of 15 & 16 Vict. c. 57, has reported that corrupt practices have extensively prevailed at an election, bills have been brought in founded upon the reports of the commissioners for the prevention of bribery in certain constituencies, and also for the disfranchisement of certain voters. These bills however fell through, as it was urged that an indemnity had been given to the voters who had given evidence of corrupt practices. But by 26 & 27 Vict. c. 29, s. 7, the certificate of indemnity can only be used as a protection from proceedings in the case of any indictment, information, or action pending against any witness for any offence under the C. P. P. Acts (q).

(q) The boroughs of Sligo and Cashel, Bridgewater and Beverley, in 1870, and certain voters in Dublin and Norwich in 1870 and 1871, mentioned in the reports of the judge and the election commissioners, were disfranchised.

PENALTIES.

Disfranchisement of constituency.

Suspension of writ.

Four boroughs were disfranchised by the Rep. Peop. Act, 1867, in consequence of the corrupt practices which had been reported to exist there extensively. (May's Parl. Prac., Ed. vi. 613.)

Where a seat is vacant, and general and notorious corruption has been proved to have prevailed at the last election, the House of Commons has frequently, for an indefinite time, deprived the constituency of its parliamentary privileges, by suspending the issue of writs, either—

- A. By a resolution to that effect. (May's Parl. Prac., Ed. vi. 611); or
- B. By negating any motion for a new writ, with a view to further inquiry. (*Penrhyn*, C. & D. 56.)

**PENALTIES
ON DIS-
QUALIFIED
PERSONS
SITTING AND
VOTING IN
THE HOUSE
OF COMMONS.**

Persons holding offices and places of profit.

By 6 Anne, c. 7, s. 25, no person who shall have in his own name or in the name of any person or persons in trust for him or for his benefit, any *new* office or place of profit whatsoever *under the crown*, which at any time since the 25th October, 1705, shall have been created or erected or hereafter shall be created or erected; nor any person who shall be a commissioner or sub-commissioner of prizes, &c.; nor any person having any pension from the crown during pleasure shall be capable of *being elected* or of sitting or voting as a member of the House of Commons in any parliament which shall be hereafter summoned and holden.

By s. 26 the acceptance of an office of profit while a member makes the election void, but the holder may again be elected. *Semble*, however, that there is in this case no penalty under s. 29. (See App. and Chap. VII.)

SITTING AND VOTING IN THE HOUSE OF COMMONS.

S. 29 enacts, that if any person hereby disabled or declared incapable is returned, his return shall be void, and if he sit or vote he shall forfeit £500 (r). PENALTY

And also new offices in Ireland, erected since 33 Geo. 3, c. 41 (Irish Act), under 41 Geo. 3, c. 52, s. 5. By s. 6 such disabled persons shall forfeit £500 for every day on which they shall sit or vote.

Pensioners from the crown during pleasure are incapable of being elected by s. 25 of 6 Anne, c. 7. PENALTY
Penalty the same as in s. 29 of that act.

Pensioners from the crown for a term of years are by 1 Geo. 1, stat. 2 c. 56, s. 2, (Ireland) 33 Geo. 3, c. 41, s. 1, liable to a penalty of £20 for each day they sat or voted (s).

(r) In the *Cambridge case* (Rogers on Elections 12th ed., 240), in 1866, the return of Mr. F. was avoided on the ground that he held a new office of profit under the crown within the 25th section. It appeared that he had been appointed standing counsel to the Secretary of State in Council of India after the passing of the 21st and 22nd Vict. c. 106, whereby the government of the territories of the East India Company was vested in the crown. Under s. 15 of that act, the Secretary of State in Council was required to submit to the Queen in Council a scheme for the permanent home establishment of the India Office, and the Queen in Council was to fix and declare what should constitute such establishment and what salaries should be paid to the persons therein. In the scheme submitted to and approved by her Majesty in Council was inserted the office of standing counsel, with a certain yearly payment (in the scheme called "salary") affixed to it, which Mr. F. received, in addition to the usual fees of counsel. The committee avoided the return. It is to be observed that there was an old office of standing counsel to the East India Company, to which Mr. F.'s office exactly corresponded.

An act to indemnify Mr. F. (29 & 30 Vict. c. 20) was subsequently passed.

(s) By 32 & 33 Vict. c. 15, persons with Civil Service pensions or superannuation allowances are allowed to sit in Parliament.

PENALTIES.Contractors
(6).

By 22 Geo. 3, c. 45, s. 1, 41 Geo. 3, c. 52, s. 4, any person directly or indirectly, &c., undertaking or enjoying in the whole or in part any contracts, &c., made with the commissioners of the treasury, commissioners of the navy, or victualling offices, &c., or generally on account of the public service, is disqualified from being elected or sitting.

By 22 Geo. 3, c. 45, s. 9, disqualified persons as aforesaid sitting or voting in parliament shall forfeit £500 for every day on which they shall so sit or vote.

(t) See *Leominster and Maidstone cases*, Rogers, 12th ed., App.; *Thompson v. Pearce*, 1 B. & B. 25.

In *Royse v. Birley*, (*Manchester Election Petition*), 4. L. R. C. P. 296, a contract was entered into in June, 1868, for the supply of goods for the public service of India. The contract was completely executed by the contractors by the delivery and acceptance of the goods by the 23rd October, 1868; but the contractors did not receive payment from the India Office until the 18th January, 1869. In the interval, viz., on the 18th November, 1868, one of the contractors was elected a member of the House of Commons:—

Held, That assuming the contract to be within 22 Geo. 3, c. 45, s. 1, it did not avoid the election.

Quære, whether a contract for the supply of goods for India, entered into with the Secretary of State for India in Council, is a contract for “the public service” within 22 Geo. 3, c. 45, s. 1.

A firm, in which a member of the House of Commons was a partner, sold and delivered goods for the service of a lunatic asylum which had been appropriated to criminal lunatics under the royal sign manual, pursuant to 23 & 24 Vic. c. 75, in ignorance that they were dealing with a government institution:—

Held, Not a disqualification within 22 Geo. 3, c. 45, s. 1.

In the case of Sir S. W. (Committees’ Reports, Vol. VII, March 15, 1869), where a firm in which a candidate was a partner, sent a tender to the government stationery department, which tender was accepted and goods supplied by the firm accordingly; it was held a disqualification, although arrangements had been completed for a dissolution of partnership, and the deed was actually signed three days after the declaration of the poll.

The act of George III. does not extend to any subscriber to a government loan. See Report, 1855 (401).

By 7 & 8 Will. 3, c. 25, s. 8, any person not of ^{PENALTIES.} the full age of twenty-one years who sits or votes ^{Infants.} in Parliament is liable to the same penalties as a person sitting or voting without having been chosen or returned.

By 41 Geo. 3, c. 63, no person ordained priest ^{Clergymen.} or deacon, nor any minister of the Church of Scotland, shall be elected; and if he sit or vote he shall forfeit £500 for each day he does so (*u*).

By 35 & 36 Vict. c. 60, s. 3, it is enacted, "The offences of bribery, treating, undue influence, and personation, shall be deemed to be corrupt practices at an election for the purposes of this act."

<sup>PENALTIES-
MUNICIPAL</sup>
.....
Penalties or
corrupt
practices at
parliamentary
election
extended to
municipal
elections.

"The terms 'bribery,' 'treating,' 'undue influence,' and 'personation,' shall respectively include anything committed or done before, at, after, or with respect to an election, which if done before, at, after, or with respect to an election of members to serve in Parliament would render the person committing or doing the same liable to any penalties, punishments, or disqualifications, for bribery, treating, undue influence, or personation, as the case may be, under any act for the time being in force with respect to elections of members to serve in Parliament."

"Any person who is guilty of a corrupt practice at an election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments, as if the corrupt practice had been committed at an election of members to serve in Parliament."

(*u*) By 33 & 34 Vict. c. 91 (The Clerical Disabilities Act, 1870), any minister of the Church of England may execute a deed of relinquishment (s. 3), to be enrolled in Chancery, which frees him from his disabilities (s. 4), under 41 Geo. 3, c. 63.

**PENALTIES—
MUNICIPAL.**

Giving re-
freshments
on nomina-
tion or poll-
ing day.

The penalties attached by s. 23 of the C. P. P. Act, 1854, are extended by this section to the case of a municipal election as being included in the word "treating" in § 3. *Hargreaves v. Simpson*, 4 Q. B. D. 403.

A person guilty of several acts of bribery at a municipal election (see 17 & 18 Vict. c. 102, s. 2) is liable to a penalty in respect of each such act. *Milnes v. Bale*, 10 L. R. C. P. 591.

Penalties as
to conduct of
the poll.

The penalties (parliamentary) attached by the Ballot Act to the offences above enumerated in this chapter as regards the conduct of the poll, apply to municipal as well as parliamentary elections. See Ballot Act.

**PENALTIES
ON
CANDIDATE.**

Disqualifica-
tion of can-
didates per-
sonally guilty
of corrupt
practices.

By C. P. M. E. Act, 1872, s. 4 (post App.), it is provided that :—"Where it is found by the report of an election court acting under the provisions of this act that any corrupt practice has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of corrupt practices at the election, and his election, if he has been elected, shall be void, and he shall (whether he was elected or not) during seven years from the date of the report be subject to the following disqualifications : viz.—

1. He shall be incapable of holding or exercising any municipal office or franchise, and of having his name placed on the register, or voting at any municipal election :
2. He shall be incapable of acting as a justice of the peace and of holding any judicial office :

3. He shall be incapable of being elected to and of sitting or voting in Parliament : PENALTIES—
MUNICIPAL.
4. He shall be incapable of being registered or voting as a parliamentary voter :
5. He shall be incapable of being employed by any candidate in any parliamentary or municipal election :
6. He shall be incapable of acting as overseer or as guardian of the poor."

As to the construction of the words "is found by the report," compare s. 43 of Parl. El. Act, 1868, *supra* p. 71.

By C. P. M. E. Act, 1872, s. 5, it is provided that:—"If it is found by an election court acting under the provisions of this act, that a candidate has by an agent been guilty of any corrupt practice at an election, or that any act hereinafter in this act declared to be an offence against this act has been committed at an election by a candidate or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any municipal office in the borough for which the election was held, and if he was elected his election shall be void."

Corrupt practices by agent, or offence against act by candidate.

As to the construction of the words "is found by the report," compare s. 43 of Parl. El. Act, 1868, *supra* p. 71.

By C. P. M. E. Act, 1872, s. 7, post App., the employment of voters for payment as canvassers is prohibited ; and the candidate employing them is deemed guilty of an offence against the

Employment of voters as canvassers.

**PENALTIES—
MUNICIPAL.**

Giving refreshments on nomination or polling day.

The penalties attached by s. 23 of the C. P. P. Act, 1854, are extended by this section to the case of a municipal election as being included in the word “treating” in § 3. *Hargreaves v. Simpson*, 4 Q. B. D. 403.

A person guilty of several acts of bribery at a municipal election (see 17 & 18 Vict. c. 102, s. 2) is liable to a penalty in respect of each such act. *Milnes v. Bale*, 10 L. R. C. P. 591.

Penalties as to conduct of the poll.

The penalties (parliamentary) attached by the Ballot Act to the offences above enumerated in this chapter as regards the conduct of the poll, apply to municipal as well as parliamentary elections. See Ballot Act.

**PENALTIES
ON
CANDIDATE.**

Disqualification of candidates personally guilty of corrupt practices.

By C. P. M. E. Act, 1872, s. 4 (post App.), it is provided that :—“Where it is found by the report of an election court acting under the provisions of this act that any corrupt practice has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of corrupt practices at the election, and his election, if he has been elected, shall be void, and he shall (whether he was elected or not) during seven years from the date of the report be subject to the following disqualifications : viz.—

1. He shall be incapable of holding or exercising any municipal office or franchise, and of having his name placed on the register, or voting at any municipal election :
2. He shall be incapable of acting as a justice of the peace and of holding any judicial office :

3. He shall be incapable of being elected to and of sitting or voting in Parliament :
4. He shall be incapable of being registered or voting as a parliamentary voter :
5. He shall be incapable of being employed by any candidate in any parliamentary or municipal election :
6. He shall be incapable of acting as overseer or as guardian of the poor."

As to the construction of the words "is found by the report," compare s. 43 of Parl. El. Act, 1868, *supra* p. 71.

By C. P. M. E. Act, 1872, s. 5, it is provided that:—"If it is found by an election court acting under the provisions of this act, that a candidate has by an agent been guilty of any corrupt practice at an election, or that any act hereinafter in this act declared to be an offence against this act has been committed at an election by a candidate or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any municipal office in the borough for which the election was held, and if he was elected his election shall be void."

PENALTIES—
MUNICIPAL.

Corrupt
practices by
agent, or
offence
against act
by candidate.

As to the construction of the words "is found by the report," compare s. 43 of Parl. El. Act, 1868, *supra* p. 71.

By C. P. M. E. Act, 1872, s. 7, post App., the employment of voters for payment as canvassers is prohibited ; and the candidate employing them is deemed guilty of an offence against the

Employment
of voters as
canvassers.

PENALTIES—
MUNICIPAL. act, and liable on summary conviction to a penalty not exceeding ten pounds. See supra p. 13. (Bribery.)

Conveyance
of voters. A candidate who pays or agrees to pay any money on account of the conveyance of any voter to or from the poll is guilty of an offence against the act, and liable on summary conviction to a penalty not exceeding five pounds. (C. P. M. E. Act, 1872, s. 8, post App.). See also (Bribery) supra p. 23.

ON PERSONS
OTHER THAN
CANDIDATE. By C. P. M. E. Act, 1872, s. 4, it is provided that :—

Disqualifica-
tion by being
found guilty
of any
corrupt
practice.

“If any person is upon an indictment or information found guilty of any corrupt practice at an election, or is in any action or proceeding adjudged to pay a penalty of forfeiture for any corrupt practice at an election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.

Voter
employed as
paid
canvasser.

By C. P. M. E. Act, 1872, s. 7, post App., the employment of voters for payment as canvassers is prohibited ; and any person so employed is deemed guilty of an offence against the act, and liable on summary conviction to a penalty not exceeding ten pounds. See supra (Bribery) p. 13.

Paid
canvasser
voting.

If a paid canvasser votes he is guilty of an offence against the act, and is liable on summary conviction to a penalty not exceeding ten pounds. (C. P. M. E. Act, 1872, s. 7, post App.)

An agent for a candidate who pays or agrees to pay any money on account of the conveyance of any voter to or from the poll, is guilty of an offence against the Act, and liable on summary conviction to a penalty not exceeding five pounds. (C. P. M. E. Act, 1872, s. 8, post App.). See also (Bribery) *supra* p. 23.

PENALTIES—
MUNICIPAL.

Agent
paying for
the convey-
ance of
voters.

As to prosecutions or actions for penalties instituted by the clerk of the peace at the direction of an election court, see C. P. M. E. Act, 1872, s. 9, post App.

Clerk of the
peace to pro-
secute or sue
for penalties
if so directed.

The costs of prosecutions for corrupt practices at Municipal Elections are provided for by C. P. M. E. Act, 1872, s. 9, see post App.

Costs of pro-
secutions for
corrupt
practices.

By the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, s. 48, it is enacted that:—

Penalty on
mayor, &c.,
neglecting to
conduct an
election.

“If any mayor, alderman, or assessor of any borough, who shall be in office at the time herein appointed for the revision by them of the burgess list under this act, or for any election of councillors, assessors, or auditors, which he is required to conduct or declare, shall neglect or refuse to revise such burgess list, or to conduct or declare such election as aforesaid, every such mayor, alderman, and assessor shall for every such offence forfeit and pay the sum of one hundred pounds;”

By s. 53 of 5 & 6 Will. 4, c. 76, it is provided that if any person shall act as mayor, alderman, or town councillor, when not duly qualified according to the provisions of that act, he shall be liable to a penalty of fifty pounds, to be recovered by any burgess of the borough suing for the same. The

Penalties on
disqualified
persons
acting as
town coun-
cillor, &c.

PENALTIES. persons disqualified by the act will be found enumerated, post cap. viii.

Removal of disqualification on proof that disqualification was procured by perjury. By Parl. El. Act, 1868, s. 47, it is provided that :—

“ If at any time after any person has become disqualified by virtue of this act, the witnesses, or any of them, on whose testimony such person shall have so become disqualified, shall, upon the prosecution of such person, be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to order, and the court shall, upon being satisfied that such disqualification was procured by reason of perjury, order, that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.”

And a similar provision is contained in s. 4 of C. P. M. E. Act, 1872, as to disqualification arising under that act.

Penalty on giving false answer to returning officer at municipal elections.

As to the penalty for giving a false answer to the questions authorised to be asked of a voter at the poll by the returning officer, see *post* “ Municipal Elections :” and *supra* p. 89.

CHAPTER IV.

SCRUTINY.

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SCRUTINY.

When necessary.

WHEN the petition alleges that the unsuccessful candidate at the election had the majority of legal votes, and ought therefore to have been returned, the manner of ascertaining the truth of the allegation is by a scrutiny of the votes (*a*).

Who may claim seat.

Electors on behalf of the candidate have the same right to claim the seat for him as the candidate himself (*b*).

Certificate of judge.

“ In the event of the candidate (C. D.) for whom the seat is claimed having been shown to have obtained the majority of legal votes, it will be the duty of the judge to state in his certificate to the Speaker that A. B. (the sitting member) is unseated, and that C. D. ought to have been seated, and ought to have been returned, and should be returned now.” *Taunton, Judgments, 357.*

When an election petition claims the seat for one of the defeated candidates, and the judge on the trial of the petition decides that such candidate was duly elected, the judge's certificate is final, and a petition against the return of such candidate cannot subsequently be presented under

(a) See *Galway (County) case*.

(b) A candidate claiming the seat would be eligible for another constituency before his claim is determined. *May's Parl. Prac. Ed. vii. 641.*

the provisions of the Parl. El. Act, 1868, unless SCRUTINY.
some *subsequent* case of personal bribery on the
part of the sitting member should arise. (See
Practical Suggestions). *Waygood v. James (Taunton)*
6 L. R. C. P. 361; *Stevens v. Tillet*, 4 L. R.
C. P. 147, and post "Certificate & Report."

Recriminatory evidence is admissible *when the* Recrimina-
tory evidence
admissible
when seat
is claimed.
seat is claimed. Parl. El. Act, 1868, s. 53.

"On the trial of a petition under this act
complaining of an undue return, and
claiming the seat for some person, the
respondent may give evidence to prove
that the election of such person was undue
in the same manner as if he had presented
a petition complaining of such election."

The inquiry by way of scrutiny is sometimes Scrutiny
usually
entered into
after the
other
charges are
disposed of.
entered into before the other charges in the peti-
tion are disposed of, but this is not an expedient
course, since it is possible that those defending the
seat will, by the above section, be able to disqualify
the candidate for whom the seat is claimed.

The general charges would therefore usually be
gone into first by the petitioner, and, at the close
of his case, the respondent's counsel proceeds not
only to answer the charges brought against the
respondent, but to open counter-charges against
the petitioner.

If the petitioner is disqualified, a scrutiny of If petitioner
is disquali-
fied scrutiny
may still
take place.
votes may still take place for the purpose of show-
ing that the respondent has not really a majority
of legal voters, even though the respondent is de-
clared not to have been guilty of corrupt practices.

See also *Waterford*, 2 O'M. & H. 2. *Southampton*,
1 O'M. & H. 225.

SCRUTINY.

“The question in the scrutiny would be which of these gentlemen had the majority of legal votes, and assuming the petitioner to have been personally incapacitated, that would not have affected the votes of the persons who gave their votes for him, they being ignorant of it. They would be perfectly good votes, and the persons who were the supporters of the petitioner would have a right to have it determined whether or not the respondent was sent to parliament by a legal majority.” *York, West Riding (Southern Division)*, Judgments, 303, 1 O’M. & H. 215.

“Against any member, therefore, who is elected in the first instance, any one directly interested may petition: if the petition does not claim the seat there is no recrimination allowed; but if the petition does claim it, the respondent is entitled to protect himself, and, before the scrutiny, prove a recriminatory case, and show that the election of the other candidate could not stand (c). It is true that, even if he proves it, the petitioner may still go into the scrutiny to turn out the sitting member.” *Waygood v. James, per Willes, J.*

If the sitting member withdraws from the inquiry the scrutiny may still continue; see post p. 110.

List of Voters intended to be objected to.

Whenever it is intended to enter on a scrutiny, the parties on each side, those defending as well as those attacking the seat, must deliver in lists of

Parties on
each side to
make out
lists.

(c) In that case, if the scrutiny were successful, the result would be a void election.

SCRUTINY.

the voters intended to be objected to, in compliance with the General Rules, *Mich. Term*, 1868, vii., viii., post App. 501

VII. "When the petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return shall, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the court or judge (*d*) upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered."

VIII. "When the respondent in a petition under the act, complaining of an undue return and claiming the seat for some person, intends to give evidence to prove that the election of such person was

(*d*) Under General Rules vii. and viii. of the Cor. Prac. Mun. El. Act, 1872, the Court of C. P., or a judge at chambers, can alone allow such lists to be amended, consequently the power which is given to a judge who tries an election petition under the Parl. El. Act, 1868, is not vested in a barrister appointed to try a municipal petition under the former act.

SCRUTINY.

undue, pursuant to the 53rd section of the act, such respondent shall, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the court or judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered."

The six days mentioned in the above rules are six clear days exclusive of Sundays. *Joyce v. O'Donnell (Galway)*, 22 W. R. 654. Rules of Jan. 1875, r. 3.

Time for
delivering
list cannot
be extended.

There are similar rules (rr. 7 & 8 of Reg. Gen. 1872, post App.) with regard to municipal election petitions; under these it has been decided that the court has no power to extend the time for the delivery of the list of objections so to allow the list to be delivered at a later time; though where a list has been delivered within the time the court may allow it to be amended under the latter part of the rule. *Neild v. Batty*, 9 L. R. C. P. 104.

List of ten-
dered votes.

Votes may also be added to the poll if they have been duly tendered at the election and refused; (*Warrington*, 1 O'M. & H. 79) but since the, passing of the Ballot Act, 1872 (see s. 7 of that act, post App.), personation cases would seem

SCRUTINY.

to be the only ones in which votes can be tendered, and therefore sought to be added; should, however, the presiding officer by any chance refuse to deliver a ballot-paper to a person whose name is on the register, on the ground of personal disqualification, such vote should be tendered. See Form of List of Tendered Votes, post App.

The best way of preparing the lists is to form them into classes with headings containing the objections against the voters in each class; the list of tendered votes should also be included as above mentioned.

Each ground of objection intended to be relied upon should be distinctly stated and the name of the voter accurately inserted, together with his number, on the register. (See Forms, Appendix).

In cases of scrutiny the inquiry into each vote is a separate case, and is opened, answered, and decided upon by itself.

The petitioner begins with any class of votes he pleases, and having finished that class proceeds to another (e); and when he has established a majority, either by striking off or putting on votes, the sitting member proceeds to reduce it by taking class after class in the same manner, and so they continue *alternis vicibus* till one is exhausted.

In the *Oldham case*, where H. and P. were the sitting members, and the seat was prayed on a

(e) It was usual before committees to require one class of objections to be concluded before another was entered upon, and it is therefore competent for the judge to require this convenient practice to be adhered to. *Per Willes, J., Northallerton.*

FRACTION IN CASES OF SCRUTINY. scrutiny for C. and S., the numbers polled for the respective candidates being—

| | | | |
|-----------|------|-----------|------|
| H. | 6140 | C. | 6116 |
| P. | 6122 | S. | 6084 |

it was suggested that the simplest course would be to proceed in the first instance with the scrutiny as between C. and P., and that when they had placed C. in a majority over P., they should then proceed with the case as between S. and H. Blackburn, J., assented to that course as being a convenient one. *Oldham*, 1 O'M. & H. 151.

When the name of the voter appears in several classes of objections.

It frequently happens that a voter is objected to on several different grounds, and that his name is inserted in different lists according to the particular class of objection. In the *second Bewdley case* the course pursued was, where the name of the same voter was inserted in different classes of objections, no evidence with reference to his vote was gone into except as regarded the class then under consideration. If his vote was allowed, and his name again appeared in another class of objections, evidence was again taken as to the validity or invalidity of his vote as regarded the class then under consideration.

If sitting member withdraws from inquiry, scrutiny may still continue.

If at any time the sitting member withdraws from the inquiry, the petitioner must continue to strike off votes until the person for whom the seat is claimed is in a majority.

In the *Norwich case*, where S. had been unseated, and it was argued that, in consequence, he had no further *locus standi*, Martin, B., said, "Is not S. a respondent in respect of every matter that you charge in your petition, and in respect of every claim you make in your petition? and has he not

a right, as having been a candidate, and though he may be unable to protect his own seat, to show that you are not entitled to it?" *Norwich*, 19 L. T. Rep., N. S. 620.

PRACTICE IN
CASES OF
SCRUTINY.

The votes struck off on a scrutiny are of two classes—

VOTES
STRUCK
OFF ON A
SCRUTINY.

- (a.) Votes of persons on the register who have complied with the conditions necessary for registration and voting, but who by their own conduct as regards the election have forfeited their right to vote. All these instances will be found fully arranged under the heading of VOTES VOID FROM CIRCUMSTANCES OF THE ELECTION, p. 112 & seq.

Their titles are as follows :—

Void from
circum-
stances of
the election.

- (1.) Bribers.
Persons bribed.
- (2.) Treaters.
Persons treated.
- (3.) Intimidators.
Persons intimidated.
- (4.) Procurers of personation.
- (5.) Persons employed at an election for hire.
- (6.) Returning officer.
- (7.) Personators.
- (8.) Persons whose votes are void through mistakes or irregularities at the poll.
- (9.) Votes thrown away.

VOTES
STRUCK OFF
ON A
SCRUTINY.

Votes void
from legal
incapacity.

- (b.) Votes of persons on the register who are disqualified under the Ballot Act, 1872, s. 7, but whose names have been allowed to remain on the register, or whose disqualification has arisen since registration. The disqualifications are of a personal character, and their titles will be found below under VOTES VOID FROM LEGAL INCAPACITY.

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

Bribers and
persons
bribed.

The votes of persons bribing and persons receiving bribes are both void. *Southampton*, 1 O'M & H. 224; Although there is no statutory provision making them so, so far as regards Parliamentary Elections, now that 26 & 27 Vict. c. 29, s. 8, is repealed by Parl. El. Act, 1868: at Municipal Elections they fall within the provisions of C. P. M. E. Act, 1872, s. 10, post App.; for as such votes contravene the C. P. P. Act, 1854, they would seem on common law principles to be void; and Willes, J., in the *Windsor case*, said, "A bribe by anybody, if proved, will defeat the vote." *Windsor* 19 L. T. Rep., N. S. 613. Also in the *Norwich case*, where Martin, B., said, "Every bribed vote would of course be struck off." *Norwich*, 19 L. T. Rep., N. S. 621.

Indirect
modes of
bribery.

This principle would also apply to any of the indirect modes of bribery set out in the chapter on Corrupt Practices, pp. 9—26, inasmuch as it seems that what would avoid an election ought *à fortiori* to avoid a vote. *Per* Willes, J., *Southampton*, 1 O'M. & H. 222.

Promise
induced by a
bribe not
performed.

It is to be noticed that a voter who votes for one candidate after having received money for promising to vote for the other is guilty of bribery

equally as if he voted according to his promise, and this, even if at the time he made the promise he had no intention of fulfilling it. *Per Willes, J., Lichfield*, 1 O'M. & H. 29. The briber's vote would clearly be bad on a scrutiny; but *quære* whether the bribee's vote would be so also.

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

An offer by a voter to sell his vote will not render the vote bad on a scrutiny unless the offer be proved to have been accepted by the candidate or his agent, either within C. P. P. Act, s. 3, or at Common Law, and this, even though the vote were in fact given for the candidate to whom the offer was made. *Mallow*, 2 O'M. & H. 21.

Offer to sell
vote.

In order to render the votes of persons contravening the provisions of the Rep. Peop. Act, 1867, s. 36, by the illegal payment of expenses of conveying voters in boroughs to the poll such payment and conveyance must be shown to be corrupt, and therefore amounting to bribery.

Conveying
voters in
boroughs.

Where a voter had refused to go and vote unless his fare and his day's wages were paid him, which was done, the vote was struck off. *Oldham*, 1 O'M. & H. 162. As to conveyance of voters, see also *supra* p.19 & seq.

In order to make the votes of persons contravening the provisions of the C. P. P. Act, 1854, s. 23, void, by the illegal giving of refreshments on the nomination day (which is now virtually abolished, see Ballot Act, 1872, s. 1), or polling day to voters, such giving of refreshments must be shown to be corrupt, and therefore amounting to treating.

Giving re-
freshments
on nomina-
tion or poll-
ing day.

By the Rep. Peop. Act, 1867, s. 11 (post App.), no elector employed for hire for the purposes of

Persons em-
ployed at
elections for
reward.

**VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.**

the election shall be entitled to vote. The vote of an elector under those circumstances will be clearly void (and see as to Municipal Elections, C. P. M. E. Act, s. 7, post App.). At *Southampton*, Willes, J., expressed an opinion that the employment of a child of a voter under his parent's control, so that he could command the wages his child was to receive, was in effect employment of the voter. 1 O'M. & H. 223.

**Persons em-
ployed to
keep order.**

Where each party agreed to appoint and pay twenty-four men to keep order at the doors of the various polling stations. Blackburn, J., intimated that their votes would probably be bad on a scrutiny. *Gloucester*, 2 O'M. & H. 62.

And where £10 was paid to two voters to remunerate them for the expense incurred in employing assistants to attend to their business while they were away and engaged on electioneering matters, this was held to invalidate the votes. *Southampton*, 1 O'M. & H. 224. For what employments incapacitate, and what do not, see *supra*, pp. 9—13.

**Agent of
candidate**

The vote of an agent will not be bad on a scrutiny unless he be proved to be a paid agent. *Cashel*, 1 O'M. & H. 289.

**Disqualified
even though
the candidate
employing
him retires.**

The disqualification of an agent continues even though the candidate for whom he acts as agent retires from the contest; and his vote, though given for one of the other candidates, will be bad, and will be struck off on a scrutiny. *Mallow*, 2 O'M. & H. 20. This disqualification would probably not extend to a partner of the agent if not himself personally retained as paid agent. *Ibid.*, p. 21.

Treaters.

Votes of treaters would be void on precisely the

VOTES VOID FROM CIRCUMSTANCES OF ELECTION.

same footing as bribers, the one being corruption VOTES V
FROM C
CUMSTA
OF THE
ELECTI
from money, the other by means of meat and drink.

Votes of persons treated are void by the C. P. P. Persons
treated.
Intimidate
Act, 1854, s. 4.

Votes of persons intimidating would be void, as
being votes contravening the provisions of the
C. P. P. Act, 1854, s. 5, and would therefore seem
(on reasons analogous to those which avoid the
votes of persons guilty of bribery) on common law
principles to be void. *Per* Willes, J., *Northallerton*
1 O'M. & H. 168.

The votes of persons intimidated are void, as Persons
intimidate
being influenced in such a manner by the represen-
tations made of the acts done as to be given not
of their own free-will.

And this, whether the vote was the result of in-
timidation practised by the agents of the candidate,
or of general intimidation. *Bradford*, 1 O'M. & H.
40.

Where J. B. was told by his employer's son if
he voted for C. and P. he must stand the conse-
quences (by which he understood he would be dis-
missed if he did so), so, in consequence, he voted
for H. and P. :—

Blackburn, J., ordered the vote to be struck off But may
be added
from H., but *refused* to add one for C. *Oldham*,
1 O'M. & H. 161.

Where D. intended to vote for C. and S., but on
the polling day a note was put into his hand by
L., who said it came from D.'s master, the note
containing the words, "Those who don't vote the
way their master wishes them will be discharged,"
and D. voted for H. and P. There was no evidence
the note was genuine :—

**VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.**

Blackburn, J., said, "The question was whether the man's vote was influenced in such a manner by the representation made to him that he gave it under protest," and struck off the vote. *Oldham*, 1 O'M. & H. 161.

**Procurers of
personation.**

The votes of those who aid, abet, counsel, or procure personation would seem to be void, on the same principle as the votes of bribers, though equally there is no statutory provision making them so at Parliamentary Elections. At Municipal Elections they are void by C. P. M. E. Act., 1872, s. 10, post App.

**Returning
officer.**

By the Ballot Act, 1872, s. 2, a returning officer may not vote, except in case of a double return, when he may give a casting vote. See post p. 137.

Personators.

The vote of any person who is not really the voter on the register, but who pretends to be such voter, and is entered on the "Tendered Votes" list, under s. 27 of the Ballot Act, 1872, will not, on proof of the facts, be reckoned; and where the true voter has been personated at the election and afterwards comes to vote himself, his vote must also be entered on the "Tendered Votes" list, under s. 27 of the Ballot Act, 1872.

It should be borne in mind that if a person's name is on the register in a duplicate form, if he attempts to vote again after he has voted in respect of one qualification, he would fall within the provisions of s. 24 of the Ballot Act, 1872 and be deemed guilty of personation.

**Persons
guilty of
corrupt
practices at
municipal
elections.**

By s. 10 of C. P. M. E. Act, 1872, post App. the votes of persons in respect of whom any corrupt practice is proved to have been committed

at a Municipal Election shall be struck off on a scrutiny.

Where two voters promised to pair with each other and one of them voted, this in the absence of any fraud or trick is a good vote. *Northallerton*, 1 O'M & H. 169.

Before leaving the subject of votes void from the circumstances of the election, attention must be called to the 25th section of the Ballot Act, 1872, enacting that one vote shall be struck off the poll, on a scrutiny, for each voter corrupted by a candidate or his agents, or where a person employed for reward has voted (*f*).

The construction of this section was discussed in *Malcolm v. Parry*, 9 L. R. C. P. 610, (*Boston*, 2 O'M. & H. 168), where after the respondent had been unseated for the corrupt distribution of coals by his agent, the petitioner, in order to obtain the seat, claimed, on a scrutiny, to strike off one vote from the respondent's poll for each voter who had received such gift of coals, whether the voter had acted corruptly in receiving them or not, and without inquiring for whom he voted: it became, however, unnecessary to decide the

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

Vote of
voter who
has promised
to pair good
in absence of
fraud.

Vote struck
off for bribery,
treating,
or undue in-
fluence, &c.
(25th s. Ball.
Act, 1872.)

(*f*) This section was framed to meet a system of scrutiny of a totally different character to the one now in the Ballot Act. By the scheme originally embodied in the bill, it was proposed that the ballot should be entirely secret, without power of following the votes by means of counterfoils, and the only means whereby a petitioner claiming the seat could acquire it without a fresh election was by help of the provisions of the 25th section. When the House of Lords introduced the present system of counterfoils, afterwards adopted by the Government, this section became wholly unnecessary, but having remained in the Act, it became necessary to put a construction on it, as mentioned in the text.

VOTES VOID
FROM CIR-
CUMSTANCES
OF THE
ELECTION.

question as to the necessity of a corrupt intention on the part of the voter, as the Court were of opinion that the circumstances of the case raised a *prima facie* case of the existence of such corruption, in the absence of any evidence on the part of the voters that the gift was not received corruptly, and had not influenced their minds; and one vote was struck off in respect of each such voter without looking for whom he had in fact voted.

A majority of the Court, however (Lord Coleridge, C.J. and Brett, J.), said that proof that the voter had acted corruptly was necessary before a vote could be struck off under the section. (*Ibid.*)

MISTAKES AT
THE POLL.

Voter not
complying
with the
provisions of
the Ballot
Act.

When may
returning
officer reject.

By the Ballot Act, 1872, s. 2, it is enacted—

“The decision of the returning officer as to any question arising in respect of any ballot-paper shall be final (*g*), subject to reversal on petition questioning the election or return.”

By rule 36 of Ballot Act, 1872, the returning officer may reject ballot-papers for the following informalities:—

- a.* The want of official mark.
- b.* Voting for more candidates than entitled to.
- c.* Writing or mark by which votes can be identified.
- d.* Unmarked or void for uncertainty.

An agent may, with a view to a scrutiny, object to the *rejection* (rule 36); *semble*, an agent may

(*g*) As to mistakes in the counting, see pp. 138.

MISTAKES AT THE POLL.

equally object to the *counting*—as, for instance, in ^{MISTAKE} the case of an imperfect official mark—both points ^{THE} being exactly equally within the province of the returning officer to decide, and the language of the 2d section of the Ballot Act, 1872, being borne in mind.

The provisions of the Ballot Act as to voting ^{Reject} must have been complied with or the vote will be ^{scrutinized} bad (*h*).

The question of the necessity of a strict compliance with these provisions was fully discussed in *Woodward v. Sarsons*, 10 L. R. C. P. 746; it is there pointed out that the rules in the first schedule of the Ballot Act, and the forms in the second schedule are directory enactments as distinguished ^{Statute; direct} from the absolute enactments in the sections in the body of the act; and that while “an absolute enactment must be obeyed or fulfilled exactly, it is sufficient if a directory enactment be obeyed or fulfilled substantially.”

“The second section enacts, as to what the voter shall do, that ‘the voter, having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in an enclosed box.’ This is all that is said in the body of the act about what the voter shall do with the ballot-paper. That which is absolute, therefore, is that the voter shall mark his paper secretly. How he shall mark it, is in the directory part of the statute.”
(*Ibid.* p., 747.)

(*h*) As to the avoidance of the election itself on this ground, see “Conduct of Election.”

**MISTAKES AT
THE POLL.**

Breaches of
provisions of
statute itself.

Want of
official mark.

Omission to
insert
numbers in
counterfoils.

Votes bad if
voters likely
to be iden-
tified.

Thus also under s. 2, a vote will be void for want of the official mark on the ballot-paper, (*Wigtown*, 2 O'M & H. 215). And a similarly strict compliance with all the other requirements of s. 2 (see post App.) is necessary.

Where the presiding officer at a municipal election omits to insert in the counterfoils the numbers of the voters on the burgess roll; *quære* whether this will avoid the votes. *Pickering v. Startin*, 28 L. T. N. S. 111.

For the same reason votes will be bad where the ballot-paper, as filled up, might lead to the identification of the voter. See s. 2 of Ballot Act, 1872, and Sch. 2, made part of the Act by s. 28. *Woodward v. Sarsons*, 10 L. R. C. P. 747.

“The merits of each vote may turn on questions of degree which it is always difficult to distinguish, as one class may run almost imperceptibly into the other.

“In these circumstances, I think it essential to a good vote that the voter should make the cross thus pointed out, and that any mark materially different would be a deviation from what is prescribed, and a failure to fulfil the requirements of the statute. For any one to put, instead of a cross, a circle or an oval, or any other geometrical or anomalous figure, would not be a compliance with the law, independently of the consideration that such a plain and wilful departure from what was intended would suggest strongly the suspicion that some sinister purpose

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was intended." *Wigtown*, 2 O'M. & H. 220-225. MISTAKE

In *Woodward v. Sarsons*, 10 L. R. C. P. 748, a rather less stringent rule was laid down :— Result regula as to n ing bal papers

“ The result seems to be, as to writing or mark on the ballot-paper, that, if there be substantially a want of any mark, or a mark which leaves it uncertain whether the voter intended to vote at all or for which candidate he intended to vote, or if there be marks indicating that the voter has voted for too many candidates, or a writing or a mark by which the voter can be identified, then the ballot-paper is void, and is not to be counted : or, to put the matter affirmatively, the paper must be marked so as to show that the voter intended to vote for some one, and so as to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted.

“ If these requirements are substantially fulfilled, then there is no enactment and no rule of law by which a ballot-paper can be treated as void, though the other directions in the statute are not strictly

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obeyed. If these requirements are not substantially fulfilled, the ballot-paper is void, and should not be counted; and if it is counted, it should be struck out on a scrutiny. The decision in each case is upon a point of fact, to be decided first by the returning officer, and afterwards by the election tribunal, on petition."

Cases within
the rule:
bad.

The following were, in the *Wigtonn case*, considered by the Scotch court to fall within the above rules, and were held bad:—

- (1) Where a name was written across the ballot-paper, *Wigtown*, 2 O'M. & H. 217 (also held bad in *Woodward v. Sarsons*, 10 L. R. C. P. 749).
- (2) No cross but an oblique straight line. *Ibid.*, p. 221, 226.
- (3) Any plain and palpable addition unconnected with the actual mark of the vote. *Ibid.*, p. 222.
- (4) Cross or other mark put at the left hand side. *Ibid.*, p. 223, 226.
- (5) A separate and distinct stroke in addition to the cross and opposite to it. *Ibid.*, p. 219.
- (6) Two crosses, neither of them in the right place. *Ibid.*, 226.
- (7) Two parallel strokes on the back of the ballot-paper.

It will be seen that according to the less strict rule adopted by the Court of Common Pleas in *Woodward v. Sarsons*, 10 L. R. C. P., 733, many of these

votes would be held good (see below); and the following were also held bad:—

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(8) Ballot-paper marked with the name of a candidate.

(9) Ballot-paper marked with a cross with the addition of "cu" to the cross.

The following marks on the ballot-paper were in the *Wigtown case* considered not to fall within the above rules, and so were held good:—

Cases not
within the
rule: good

(1) A mark at the side of the cross. *Wigtown*, 2 O'M. & H. 217, *Wigtown* (2), 2 O'M. & H. 233.

(2) Cross made in a peculiar manner. *Ibid.*, 217.

(3) Unintentional irregularity in making the cross, as X instead of X.

(4) A cross opposite the candidate's name on the right hand side (and see also *Athlone*, 2 O'M. & H. 186, and 7 Ir. R. C. L. 240) or towards the right hand side (*Wigtown*, 2 O'M. & H. 223) though not in the proper column. *Wigtown* (2), 2 O'M. & H. 232.

(5) Cross made in ink and not with the pencil provided. *Wigtown*, 2 O'M. & H. 223.

In *Woodward v. Sarsons*, 10 L. R. C. P. 733, the following modes of marking were held good in the absence of evidence of connivance or prearrangement:—

(6) Two or three crosses.

(7) A single stroke (thus /) instead of a cross.

(8) A straight vertical line instead of a cross.

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- (9) A mark like an imperfect letter P in addition to a cross.
- (10) A star instead of a cross.
- (11) A cross blurred or marked with a tremulous hand.
- (12) A cross at the left hand side of the paper.
- (13) A pencil line drawn through the name of the candidate not voted for.
- (14) A ballot-paper torn longitudinally through the centre.

Discrepancy.

The apparent discrepancy is perhaps to be explained by the existence of evidence of connivance or prearrangement in the *Wigtown case* (see *Ibid.* per Lord Coleridge, C. J., at p. 750).

Face of
ballot-paper
marked by
presiding
officer.

Where the presiding officer marked the face of the ballot-paper with the number of the voter on the burgess roll before delivering it to the voter for use, the voters were held bad, as the voters might have been identified, though this was not in fact done. *Woodward v. Sarsons*, 10 L. R. C. P., 733-748.

Breach of
rules.

Where the presiding officer wrapped up the voting papers of illiterate voters each in the corresponding declaration of inability to read, and placed them in the ballot-box contrary to rules 26 and 29; so that it would have been possible for the voters to be identified at the counting of the votes, though this was not in fact done; this was held not to avoid the votes on a scrutiny, the means of identification not being any mark or writing on the ballot-paper so as to fall within s. 2. *Woodward v. Sarsons*, 10 L. R. C. P. 733-748.

Mistake in
form of
ballot-paper.

And where (before 38 & 39 Vict. c. 40) a candidate was nominated at a municipal election by two

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nomination-papers, one being valid and the other invalid, and the ballot-papers contained his name twice, once in respect of each nomination (contrary to the form given in the 2nd schedule to the Ballot Act) ; the defect was held to be cured by s. 13 of the Ballot Act, and the votes given to him in respect of each name were held good, and he was allowed to count the whole as his total of valid votes. *Northcote v. Pulsford*, 10 L. R. C. P. 476.

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By rule 28 of the Ballot Act, 1872, a voter who has inadvertently dealt with his ballot-paper so that it cannot be used as a ballot-paper, may obtain another ballot-paper from the presiding officer ; on that he has to deliver up the spoilt ballot-paper, which is to be immediately cancelled.

Mistake
be corre
before ve
complete

By s. 7 of Ballot Act, 1872, a person is not entitled to vote *unless his name is on the register of voters* for the time being in force, but *quære* whether it would apply to clerical errors in the poll-book, misnomer, and misdescription of residence ; thus under the old system—

Where a clerical error existed in the poll-book, the validity of the vote was not altered. *Oldham*, 1 O'M. & H. 154.

Clerical
error in
book.

Where one Thomas B. was by mistake registered as William B., and voted under that name, Blackburn, J., held it to be no case of personation, but merely a misnomer, and the vote to be good. *Oldham*, 1 O'M. & H. 152.

Misnomer

Where a person on the register is called by a wrong name, it does not vitiate the vote so long as the *identity* of the voter is established. *Oldham*, 1 O'M. & H. 153.

MISTAKES.

Misdescription of residence.

Where a mistake occurred in the description of the locality where a voter's house was situate, Blackburn, J., held the vote to be good; the material question being not whether the description was strictly accurate or not, but whether the man was the voter intended to be on the register. *Oldham*, 1 O'M. & H. 153.

Where voter votes twice over one vote cut off.

Where the same voter was entered on the register under two different names, and he voted in respect of each entry, one vote was cut off. *Oldham*, 1 O'M. & H. 156. See also "Personation," *ante*.

**VOTES
THROWN
AWAY.**

Whenever, at the time of the election, a candidate is incapacitated from sitting in parliament, and due notice is given to the electors, all votes given *subsequent* to the publication of that notice for that candidate will be thrown away and are void. See *Trench v. Nolan (Galway County, 1872)*, 6 Ir. R. C. L. 464; *Drinkwater v. Deakin, Lunceston*, 9 L. R. C. P. 626; *Tipperary*, 3 O'M & H. 41, &c.; 9 Ir. R. C. L., 217; *Reg. v. Hawkins*, 10 East 211; affirmed (H. L.) 2 Dow. 124.

Notice of disqualification.

"Due notice must be given because, although the candidate may be personally incapacitated, it would not affect the votes of the persons who gave their votes for him, they being ignorant of his incapacity." *York (County), West Riding (Southern Division)*. Judgments, 303. *Yates v. Leach*, 9 L. R. C. P. 605.

What amounts to due notice.

Express notice of a disqualification must in all cases be given, and all votes recorded before such notice are good. When, therefore, the notice has not been given until after the election has begun,

VOTES THROWN AWAY.

the question arises whether it was given to a sufficient number of electors, so that by striking off certain votes from the sitting member's poll the petitioner would be placed in a majority.

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TEN
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If possible, the notice should be personally served on every voter, and advertised in the newspapers; if that be impossible, the notice should be affixed to some conspicuous place near the polling place, and should be affixed to the hustings, if the disqualification is discovered on the nomination day.

Galway, 2 O'M. & H. 46; *Trench v. Nolan*, Ir. Rep. 6 Com. Law, 464; *Deakin v. Drinkwater*, 9 L. R. C. P. 626; *Tipperary*, 3 O'M. & H. 41 & seq., 9 Ir. Rep. C. L. 217.

For forms of notice of disqualification see Appendix, post.

Knowledge on the part of the voters of a fact, which if they knew the law they would know constituted a disqualification, will not amount to a sufficient notice of disqualification for the purpose of seating the next unsuccessful candidate. *Reg. v. Mayor of Tewkesbury*, L. R. 3 Q. B. 629.

By rule 41 of the Ballot Act, 1872, it is still possible for votes to be thrown away; for if a competent tribunal decides that a voter has voted (which is apparent by the mark on the register), and it is proved that a known number of voters did vote after notice was given, the court, on being satisfied that the notice and the disqualification alleged in that notice were good, could pronounce those votes so given to be invalid. It would then be competent for the tribunal to see for whom those voters voted, and if it appeared they had voted for the disqualified candidate after notice,

VOTES
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AWAY.

their votes would be deemed to be thrown away.

What dis-
qualification
is within the
rule.

With regard to the nature of the disqualification which will thus incapacitate a candidate, the latest English and Irish decisions are at variance.

Irish deci-
sions.

In the *Galway (County) case* (1872), 2 O'M. & H. 46; *Trench v. Nolan*, 6 Ir. Rep. Com. L. 464 (where all the authorities are discussed in the judgments) it was held that if a candidate was guilty of a corrupt practice before an election, his status as a candidate was destroyed, and he was thereby incapacitated; and if due notice was given to the electors before polling, the votes given for him were all thrown away, and his opponent was *ipso facto* seated without a fresh election.

According to this decision the term "guilty" includes not merely the case of a candidate who has been proved guilty of corrupt practices by a competent tribunal, but extends also to the case where an allegation is made but not proved on the part of opponents that a corrupt act had been committed shortly before the election: this decision decides the status of such a candidate to be *ipso facto* destroyed—i.e., puts him on the same level as a person statutably disqualified; e.g., by holding an office of profit within the statute of 6 Anne c. 7, or being a contractor within the statute of 22 Geo. 3, c. 45. See *Leominster*, C & D. 12 (note).

English
decisions.

The view of the law taken by the Irish judges is opposed to Baron Martin's in the *Norwich case*, when that learned judge stated—

"And when a candidate, by an agent for whom he is responsible, commits an act of bribery, by that act the capacity of

the candidate to be elected ceases, *his status is destroyed*, and no vote given to him will be of any avail. Some misapprehension occurred with regard to what I stated the other day in reference to that matter. It is not that the vote is thrown away in the sense that my brother B. seems to have supposed. I do not mean it in that sense. I meant that the moment an act of bribery is done by the agent for whom the candidate is responsible, from that moment the man is incapable of being elected, the law puts its hand upon him, and says it cares not if nine-tenths of the electors vote for him. That act of bribery incapacitates him from sitting in Parliament. . . . If you suppose that because the agent of S. committed bribery at three o'clock in the afternoon of the polling day, thereupon every vote for S. after that time should be struck off, that is not correct."—*Judgments*, 123–26.

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THROWN
AWAY.

Martin, B., unseated the respondent, but, as there was no scrutiny persevered with, did not seat the petitioner.

In further support of Baron Martin's view, the employment by a candidate of an agent found guilty of corrupt practices, which might be a notorious fact, has to be *proved*, by s. 44 of the Parl. El. Act, 1868, at *the trial of a petition* against the candidate; and no notice of such employment, however notorious, would invalidate the votes.

The view of the law taken by Baron Martin

**VOTES
THROWN
AWAY.**

has since been adopted by the Court of Common Pleas in *Drinkwater v. Deakin* (*Launceston*), 9 L. R. C. P. 626 ; it was there held that bribery at an election does not incapacitate a candidate in the sense of causing votes given for him at the election after notice of the act of bribery to be thrown away : that such incapacity would not attach until he was found guilty by some competent tribunal, and that the incapacity which would (after due notice given) cause votes given for a candidate to be thrown away, is confined to cases such as those of an infant, a woman, an alien under the old law, a convicted felon (as to which see *Tipperary*, 3 O'M. & H. 41), &c., in all which

“Something is wanting in the candidate himself which cannot be supplied, the existence or non-existence of which is not dependent on argument or decision, but which the law insists shall exist in every one who puts himself forward as a candidate.” *Drinkwater v. Deakin*, 9 L. R. C. P. 635. See also the cases cited in the argument and judgments.

**Municipal
election.
Voter quali-
fied in two
wards.**

By 5 & 6 William 4 c. 76, s. 44, “If a burgess be rated in respect of distinct premises in two or more wards he shall be entitled to be enrolled and to vote in such one of the wards as he shall select, but not in more than one.” The voter if objected to at the time of the revision must make his selection at that time as to the ward in which he will be enrolled, *Reg. v. Mayor of Cambridge*, 1 E. & E. 210, 28 L. J. Q. B. 10. But he is not bound voluntarily to select before the election, *Reg. v. Morton*, 4 Q. B. at p. 146 ; *Reg. v. Tugwell*,

3 L. R. Q. B. at p. 713), and so if not objected to may be enrolled in both wards: and accordingly, where a voter so enrolled in two wards voted in both of them, the vote first given was held good, on the ground that by so voting he had properly made his selection, and the vote was not affected by his voting again in the other ward. *Reg. v. Harrauld*, 8 L. R. Q. B. 418.

VOTES
THROW
AWAY.

Until the passing of the Ballot Act, 1872, the committees, and afterwards the judges under the Parl. El. Act, 1868, refused to entertain any objection to a voter which had not been raised and decided upon by the revising barrister. Their decisions were governed by 2 & 3 Will. 4 c. 45, s. 60, and 6 Vict. c. 18, s. 98, as to England, and by 13 & 14 Vict. c. 69, s. 104, as to Ireland, and by 2 & 3 Will. 4 c. 65, s. 25, as to Scotland (i). By these acts it was enacted, that a committee might decide upon the right of any person to vote whose name was on the register, or who had tendered his vote, if his name was not on the register, in the following cases:—

VOTES VO
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- (a) When the name had been specially retained upon the register, or inserted therein or expunged or omitted therefrom, by the express decision of the revising barrister.
- (b) When the vote might be disputed on the ground of legal incapacity at the time of voting under and by virtue of any statute now or hereafter to be in force,

(i) Now all repealed.

VOTES VOID
FROM LEGAL
INCAPACITY.

or on the ground of any other legal incapacity at the time of his voting, which may have arisen subsequently to the expiration of the time allowed for making out the list of voters.

Otherwise the register was conclusive of the right to vote.

However, under the Ballot Act, 1872, the before-quoted portions of the acts referred to were all repealed, and in their place the only statutable enactment is contained in s. 7 of that act:—

“At any election for a county or borough a person shall not be entitled to vote unless his name is on the register (*k*) of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot-paper, and to vote: *Provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or relieve such person from any penalties to which he may be liable for voting.*”

The effect of the above proviso is to render the register at an election conclusive evidence of the right of any person to vote whose name appears therein; the register is also conclusive on any tribunal inquiring into any election except only in the cases of voters to whom some personal disqualification attaches. See *Stowe v. Jolliffe*,

(*k*) As to which register is the one “for the time being in force.” See 41 & 42 Vict. c. 26, s. 32. Post App.

VOTES VOID FROM LEGAL INCAPACITY.

(*Petersfield*), 9 L. R. C. P. 734. Lord Coleridge VOTES
FROM
INCAP.
in that case says :—

“ I think the true construction of these sections is, to make the register conclusive not only on the returning officer, but also on any tribunal which has to inquire into elections, except in the case of persons ascertained by the proviso. These are, ‘persons prohibited from voting by any statute or by the common law of Parliament.’

“ I do not think that these words are pointed at any of the cases which my Brother Mellor has referred to us. The receipt of alms—supposing the alms in this case to be such as to disqualify; the receipt of parochial relief; non-residence within the proper distance of the borough; non-occupation; insufficient qualification : none of these things appear to satisfy the words of this proviso. It does not mean persons who from failure in the incidents or elements of the franchise could be successfully objected to on the revision of the register; it means persons who from some inherent or for the time irremovable quality in themselves have not, either by prohibition of statutes or at common law, the status of parliamentary electors. Such, for example, are peers, whether of the United Kingdom, or of Scotland, or of Ireland, women, persons holding certain offices or employments the subjects of statutory

**VOTES VOID
FROM LEGAL
INCAPACITY.**

prohibitions, and persons convicted of crimes which disqualify them from voting. I do not say this list is exhaustive. It is enough to give examples of the cases in which I think the register would be still open." (P. 750.)

As to whom
not conclu-
sive.

The register will therefore not be conclusive on the trial of an election petition in the cases of the following persons: whether the disqualification accrued before or after registration. Women, (*Stowe v. Jolliffe* and compare *Reg. v. Harrauld*, 7 L. R. Q. B. 316, post p. 136) lunatics, aliens, peers, (*Ibid.*), minors; persons holding disqualifying offices, police (borough constable, *Bewdley*, 1 O'M. & H. 175), persons employed for hire at an election, returning officers, traitors and felons, (33 & 34 Vict. c. 33), persons who have been found guilty of corrupt practices (see Penalties). But in all these cases the presiding officer cannot, it seems, refuse to deliver a ballot-paper if the person's name is on the register, though if he votes his name may be cut off on a scrutiny. The cases of personal disqualification are very fully detailed in *Rogers on Elections* (12th Ed.), pp. 192-224.

As to whom
conclusive.

In all cases where the disqualification is not of a personal nature the register will be conclusive. The receipt of alms or parochial relief before or since registration will not therefore now disqualify if the name be in fact on the register. (*Stowe v. Jolliffe* (*Petersfield*) supra.)

Similarly as to non-residence within the proper distance of the borough (*Ibid.*); non-occupation, or insufficient qualification (*Ibid.*); or other non-personal disqualifications.

By the Ballot Act, s. 20 subs. 7 (e), the provisions of s. 7 above quoted do not apply to the case of a municipal election. The case is dealt with by 5 & 6 Will. 4 c. 76, s. 29 and 38 & 39 Vict. c. 40, s. 5.

VOTES VOID
FROM LEGAL
INCAPACITY.

Municipal
elections.

By s. 29 of 5 & 6 Will. 4 c. 76, s. 29, it is provided as follows :—

Burgess roll
conclusive
of right to
vote, except
in cases of
personal dis-
qualification

“And be it enacted, that every burgess of any borough who shall be enrolled on the burgess roll for the time being of such borough, shall be entitled to vote in the election of councillors and of the auditors and assessors hereinafter mentioned for such borough, and no person who shall not be enrolled in such burgess roll for the time being shall have any voice or be entitled to vote in any such election.”

Where a borough is divided into wards, burgesses vote at the elections of councillors for their own wards only (ss. 43–46), and see *Reg. v. Harrald*, 8 L. R. Q. B. 418, and supra p. 130, and by s. 5 of the Municipal Elections Act, 1875, post App. it is provided that :—

“At any municipal election a person shall not be entitled to sign or subscribe any nomination-paper, or to vote, unless his name is on the burgess roll for the time being in force (1) in the borough or on the ward list for the time being in force for the ward for which such election shall be held; and every person whose name is on such burgess roll or ward

(1) As to which is the burgess roll for the time being in force, see post “Municipal Elections.”

**VOTES VOID
FROM LEGAL
INCAPACITY.**

list, as the case may be, shall be entitled to sign or subscribe any nomination-paper, and to demand and receive a ballot-paper, and to vote; provided that nothing in this section shall entitle any person to do any of the acts aforesaid who is prohibited from doing such acts or any of them by law, or relieve such person from any penalties to which he may be liable for doing any such act."

Comparing the proviso at the end of this section with the similar proviso in s. 7 of the Ballot Act (*supra* p. 132), the rule may be stated to be that the burgess roll at a municipal election stands on the same footing as the register at parliamentary elections, and is conclusive of the right to vote in all cases except in cases of personal disqualification. (See cases *supra*.)

Unmarried
women may
vote if
qualified.

By 32 & 33 Vict. c. 55, s. 9, it is enacted that :—

"In this Act and the 5 & 6 Will. 4 c. 76, and the Acts amending the same, wherever words occur which import the masculine gender the same shall be held to include females, for all purposes connected with and having reference to the right to vote in the election of councillors, auditors, and assessors."

Unmarried women and widows may therefore vote at the election of town councillors if properly qualified, and on the burgess roll. *Reg. v. Harrald*, 7 L. R. Q. B. 361, apparently unaffected by 38 & 39 Vict. c. 40, s. 5.

Not so married
women.

But a married woman is by the common law incapable of voting, and as the Act does not deal

VOTES VOID FROM LEGAL INCAPACITY.

with the incapacity arising from marriage, a ^{VOTES FROM INCAPA} married woman (otherwise qualified) has no right to be put upon the burgess roll, and if she be in fact put upon it and vote, her vote will be bad. (*Reg. v. Harrauld*, 7 L. R. Q. B. 361.)

Seem also that if a woman whose name is on the burgess roll marry before the election and afterwards vote, her vote will be bad. (*Ibid.*)

In case the votes given to candidates are equal, ^{DOUBLE RETURN} it was resolved by the House of Commons (*Journals*, July 27, 1866) that, according to the law and usage of Parliament, it is the duty of the sheriff or other returning officer in *England*, in case of an equal number of votes being polled for two or more candidates at an election, to return all such candidates.

In *Scotland*, by 2 & 3 Will. 4 c. 65, s. 33 (*m*), ^{Scotlan} sheriffs are directed, in case the votes are equal, to make a double return.

All proceedings consequent on the double return would be by petition to declare, by a scrutiny of the votes, that one or the other candidate has been duly elected; and now by the Parl. El. Act, 1868, s. 40, a provision is made for cases of double return where the member complained of declines to defend his return.

This section, however, is not to apply to *Ireland*, ^{Ireland.} for by 35 Geo. 3 c. 29, s. 13 (*Irish*) (*m*), and 4 Geo. 4 c. 55, s. 68 (*m*), returning officers in Ireland are expressly forbidden to make a double return; but the sheriff, or if two, he whose name stands first in

(*m*) Now repealed by Ballot Act, 1872.

**DOUBLE
RETURN.**

Double re-
turn under
Ballot Act,
1872.

the appointment, is directed to give a casting vote, whether he has a right to vote, or has voted before, or not. May's Parl. Prac., 7th ed. 644, 645.

Now by s. 2 of the Ballot Act, 1872, where an equality of votes is found to exist between any candidates (*n*), and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer may give the casting vote, if a registered elector (otherwise he may not vote). Yet it may happen that a returning officer is not a registered elector for the county or borough for which he acts: the act makes no provision for such a contingency; if it should occur, the returning officer would have to make a double return, leaving the seat to be claimed on petition.

In such a case the Court, after deciding on the petition, will certify as to which candidate ought to have been returned. *Sheil v. Ennis (Athlone)*, 8 Ir. Rep. C. L. 240.

The returning officer *may* indeed make a double return in all cases, as he is only empowered and not required to give a casting vote.

Mistake in
counting the
votes: court
may order
votes to be
recounted.

The Court has jurisdiction to order the votes given at an election to be recounted, where it is alleged that a mistake in counting them has been made. *Renfrew*, 2 O'M. & H. 213.

(*n*) As to counting of the votes, see rules 31-37 of Ballot Act, 1872.

CHAPTER V.

THE CONDUCT OF THE ELECTION.

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| <i>not vitiating an</i> | | LORDS - LIEUTENANT, | |
| <i>election</i> | 145 | AND MINISTERS | 150 |
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| <i>the poll</i> | 145 & 146 | | |

THE subject of the avoidance of an election on the ground of corrupt practices has been dealt with in Chapter I.: it is proposed in the present chapter to consider certain other cases in which the election may be avoided by non-compliance with the rules governing the conduct of it, either on the part of the returning officer or the candidates.

Speaking generally, an election will be void at Common Law if it be so irregularly conducted as to prevent it in the opinion of the judge from being a true election. (*Hackney*, 2 O'M. & H. 77; *Woodward v. Sarsons*, 10 L. R. C. P. 733.) Thus, where

ELECT
IRREG
LAW
CONDUCT:
When void at Common Law for irregularity.

**ELECTION
IRREGU-
LARLY
CONDUCTED.**

owing to a mistake of the returning officer several polling places were closed during the whole of the polling day and others during a considerable part of it, and a large number of electors were in consequence unable to vote, the election was declared void at Common Law as well as under s. 13 of the Ballot Act. The *Hackney case*, 2 O'M. & H. 77.

**Statutes
regulating
conduct of
elections.**

Parliamentary elections are now conducted according to the regulations contained in the Ballot Act and the rules made thereunder, (see post App.) That act (see s. 20, post App.) also applies municipal elections so far as relates to the poll, with the exception of rr. 16 & 19 of the schedule: the conduct of the other parts of a municipal election are dealt with by 38 & 39 Vict. c. 40. See post App. and see "Municipal Elections."

**Distinction
between
Ballot Act
itself and
rules.**

Before considering in detail the question of the compliance with the regulations laid down for the conduct of elections, it will be useful to point out a distinction (considered more fully hereafter) between the regulations made by the Ballot Act itself, and those made by the rules in the schedule to it—viz., that the former are absolute, the latter merely directory; a strict compliance with the provisions of the former is therefore necessary, while it is sufficient if the latter be substantially complied with: see *Woodward v. Sarsons*, 10 L. R. C. P. 746. This distinction will be found to be the ground of several decisions mentioned in this chapter.

**Election,
when void
under Ballot
Act.**

By the Ballot Act, 1872, s. 13 (post App.), it is provided that "no election shall be declared invalid by reason of a non-compliance with the rules contained in the first schedule to this act, or

ELECTION IRREGULARLY CONDUCTED.

any mistake in the use of the forms in the second schedule to this act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this act, and that such non-compliance or mistake did not affect the result of the election."

ELECTI
INREG
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CONDUCT

This section was fully discussed by Grove, J., in the *Hackney case*, 2 O'M. & H. 77. In that case the borough, containing about 41,000 electors, was divided for purposes of the election into 19 polling places: two of these, where about 3000 electors were entitled then and there only to vote, were by a mistake of the returning officer closed throughout the polling day; and three other polling places, where about 4000 electors were to vote, were closed during part of the day. Grove, J., declared the election void under section 13 above (as well as at Common Law) on the ground that the electors had had no fair opportunity of recording their votes, and that therefore the election had not been "conducted in accordance with the principles laid down in the body of the act." (*Ibid.*, p. 83, approved, *Drogheda* 2 O'M. & H. 202.) It was contended on behalf of the respondent that the petitioner must satisfy the Court that the majority of votes would have been the other way if the five polling stations above mentioned had not been closed: but the judge said he could not enter into an examination as to how the electors would have voted. He added—

"The act further says that the election is not to be declared invalid if it appears to the tribunal that 'such non-compliance

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"affect
result."

**ELECTION
IRREGU-
LARLY
CONDUCTED**

or mistake did not affect the result of the election.' I am by no means satisfied that in this case the non-compliance or mistake did not affect the result of the election. In saying that I am very strongly inclined to think that the expression 'the result of the election' does not in this act necessarily mean the result as to another candidate having been elected at the poll. The result may be of various kinds. The result of the election would, in my judgment, be affected if, instead of a majority of 500, there was a majority of only 10, or even of 100. Upon a scrutiny the matter might be very different. Other causes might also produce a very considerable change of relation between the parties, and might have a very important effect upon the ultimate, if not upon the then present, representation in Parliament, that effect depending upon the magnitude of the majority. It will also be observed that the words used in the section are not, 'did not alter the result of the election,' but, 'did not affect the result of the election.' Does not the word 'affect' mean substantially 'bear upon the result?' When fairly and substantially viewed by the tribunal having cognizance of law and fact, was what occurred reasonably calculated to affect that election? In my judgment it was." *Ibid.*, p. 84.

The learned judge further said :—

“ It seems to me that the object of the Legislature in this provision is to say this—an election is not to be upset for an informality or for a triviality, it is not to be upset because the clerk of one of the polling stations was five minutes too late, or because some of the polling-papers were not delivered in a proper manner, or were not marked in a proper way. The objection must be something substantial, something calculated really to affect the result of the election. I think that that is a way of viewing it which is consistent with the terms of the section. So far as it seems to me, the reasonable and fair meaning of the section is to prevent an election from becoming void by trifling objections on the ground of an informality, because the judge has to look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a reasonable mind to produce a substantial effect upon the election.

ELECTORAL
IRREGULARITY
LAW
CONDUCT
General
instruction
Ballot Act
s. 18.

“ That being my construction of the section, I cannot say, considering the very large number of electors who have been disabled from voting upon the present occasion, that it has been an election which may fairly be taken to represent the voices of the electors of Hackney.”—

Ibid., p. 85.

“ Supposing it happened that the votes of half-

ELECTION
IRREGU-
LARLY
CONDUCTED.

a-dozen out of two or three thousand voters are omitted to be taken, are all the other votes to be set aside, and the election declared void? It would be, in my opinion, ridiculous to say that because at one booth there was an irregularity, the whole of the rest of the borough should be put to the trouble of a new election, and all that has taken place declared null and void. I adhere to what Mr. Justice Willes said at Lichfield, that a judge, to upset an election, ought to be satisfied beyond all doubt that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside." *Warrington, O'M. & H. 44.*

The question was further discussed in *Woodward v. Sarsons*, 10 L. R. C. P. 733, where Lord Coleridge in delivering the judgment of the court said as follows:—

“ We think, though there was an election in the sense of there having been a selection by the will of the constituency, that the question must in like manner be, whether the departure from the prescribed method of election is so great that the tribunal is satisfied, as matter of fact, that the election was not an election under the existing law. It is not enough to say that great mistakes were made in carrying out the election under those laws; it is necessary to be able to say that, either wilfully or erroneously, the election was

not carried out under those laws, but under some other method.”(a)

**ELECTION
IRREGU-
LARLY
CONDUCTED.**

On the other hand, a slight irregularity in the conduct of the election will not render it void if it is shown to have been conducted substantially according to the provisions of the Act.

Slight irregularities not vitiating the election.

Thus, an omission by a candidate to appoint an agent for election expenses on the day of election will not render his nomination bad. *Mayo*, 2 O'M. & H. 191. See *Woodward v. Sarsons*, 10 L. R. C. P. 746, quoted above. In that case it was also pointed out that the rules in the first schedule of the Ballot Act and the forms in the second schedule are directory enactments as distinguished from the absolute enactments in the sections in the body of the Act; and that while “an absolute enactment must be obeyed or fulfilled exactly it is sufficient if a directory enactment be obeyed or fulfilled substantially.”

Omission by candidate to appoint agent.

Statute itself absolute, rules merely directory.

When the presiding officer at a municipal election omits to insert in the counterfoils the numbers of the voters on the burgess roll; *quære*, whether this, being a breach s. 2 of the Ballot Act and not merely of the rules, will not avoid the election. *Pickering v. Startin*, 28 L. T. N. S. 111.

Omission to insert numbers in counterfoils.

In the *Drogheda case*, 2 O'M. & H. 201, the polling stations were, in consequence of an accident, not opened till 8.45 A.M., instead of 8 A.M., but no elector was in consequence prevented from voting, and the constituency was, as a fact, almost polled out. This the Court considered so slight an irregularity as not to avoid the election.

Poll not open at the proper time.

(a) As to the avoidance of votes on a scrutiny for irregularities in voting, see Scrutiny.

**ELECTION
IRREGU-
LARLY
CONDUCTED.**Closing of
the poll.

In the following case, however, a somewhat stricter rule seems to have been applied. In *Gribbin v. Kirker*, 7 Ir. Rep. C. L. 30 (an Irish election under 3 & 4 Vict. c. 108. Ir. and the Ballot Act), the election was declared void on the ground that votes were received after four o'clock, though the doors of the polling booth were closed at that time and no votes taken except those of persons already in the booth before the doors were closed.

Improper ar-
rangements
at polling
booths.

In the *Drogheda case* (supra) at some of the polling stations two rooms were used for the purposes of voting, between which was no internal communication, but to pass from one to the other a small landing had to be crossed: each voter received his ballot-paper from the presiding officer in one room and then crossed to the other, where he filled it up, recrossed to the first room, and delivered it. A policeman was stationed on the landing to prevent any communication between the voters and other persons, and in the opinion of the judge the election was "in effect" conducted "with all the secrecy of the ballot." The election was held good (b).

Irregu-
larities as to
assigning to
voters their
proper poll-
ing booths.

In the *Greenock case* where irregularities had been committed in dividing the borough into polling districts and assigning to voters their proper polling books, the election was held void. (1 O'M. & H. 249)

Election held
on the wrong
day.

As to the effect of an irregularity by the sheriff

(b) On this point a case was reserved by the judge for the opinion of the court of Common Pleas; that court being equally divided, the election judge's decision was given to the effect stated,

in holding the election on the wrong day, see *Longford*, 2 O'M. & H. 7.

By Ballot Act, s. 4 (post App., and see "Penalties,"), strict provisions are made for maintaining the secrecy of voting, and penalties imposed for their infringement.

INFRINGE-
MENT OF
SECRECY.

Infringe-
ment of rules
as to secrecy
under Ballot
Act.

In the *Bolton case*, 2 O'M. & H. 138, the Respondent's personation agent at each polling place was furnished with a register of the voters to which tickets were attached opposite the name of each voter. As soon as a voter had voted the agent tore off the ticket and put it in his pocket, and afterwards gave it to some person outside the polling station, by which means persons outside knew, while the poll was going on, who had voted and who had not voted. It was submitted by the Petitioners that this proceeding was a deliberate and wilful violation of the provisions of the Ballot Act, and that in consequence the election ought to be declared void. Mr. Justice Mellor, in his judgment, said as to this:—

By respon-
dent's agent.

"There is no doubt that the Legislature, when it passed the Ballot Act, did intend that that should be a perfectly secret mode of voting, as far as any instrumentality or machinery which it could provide could make it so."

"It is clear that it was deliberately done, because when Mr. W. found that it was proposed to be done he remonstrated and protested against it, warning them that it was contrary to the provisions of the Ballot Act, and therefore placing

**INFRINGE-
MENT OF
SECRECY.**

them in the condition of transgressing the law intentionally. But, as it seems to me, no foundation for attacking the seat can arise from the act of the personation agent, or any other officer connected with the election. The punishment is specified by the Legislature; it must be found within the four corners of the Act of Parliament, and I have no power, neither has the common law any power, to supplement any additional penalty upon either the persons who transgressed the law or the persons for whose sake or in whose favour such an act may have been done ;”

and the respondent was declared duly elected.

by presiding
officer.

Where the presiding officer marked the face of the ballot-paper with the number of the voter on the burgess roll before delivering it to the voter for use, so that the voters might have been identified, though this was not in fact done, this did not avoid the election, though it would avoid these votes on a scrutiny. *Woodward v. Sarsons*, 10 L. R. C. P. 733, 748.

Where the presiding officer wrapped up the voting papers of illiterate voters each in the corresponding declaration of inability to read (see rules 26 and 29), placed them in the ballot box, so that it would have been possible for the voters to be identified at the counting of the votes, though this was not in fact done: this did not vitiate the election. *Woodward v. Sarsons*, 10 L. R. C. P. 733, 748.

mission by The omission by the high sheriff and other

election officers to make the required declaration of secrecy will not in itself avoid the election. *Drogheda*, 2 O'M. & H. 201.

INFRINGEMENT OF SECRECY.

By the combined effect of the Ballot Act, 1872, ss. 1, 8, and the Reform Act, 2 Will. iv. c. 45., s. 71, the expenses incurred by the returning officer at a Parliamentary Election are to be recouped to him by the candidates; but he cannot, except as mentioned below, insist on having security for such expenses given to him by them as a condition precedent to allowing them to be put in nomination: where, therefore, a candidate refused to give such security, and the returning officer thereupon disregarded his nomination and declared his opponent elected, the election was set aside. *Davies v. Lord Kensington*, 9 L. R. C. P. 720.

election officers to make the declaration of secrecy.

Returning officer cannot demand prepayment of election expenses.

Now, however, by 38 and 39 Vict. c. 84, s. 3 (post App.), he may if he think fit require candidates to give security to an amount fixed by the statute within an hour of the close of the time fixed for the nomination; and in such a case if the candidate fail to give such security he shall be deemed to be withdrawn. The above provision applies to England and Ireland; a provision as to Scotland is made by 41 & 42 Vict. c. 41, s. 3.

But he may require security within an hour's time for nomination.

A candidate at a Parliamentary or Municipal Election has a general right to be present in a polling station at the election, not merely a qualified right of being present to act as his own agent or assist his own agent, and cannot be excluded by the returning or presiding officer. See Ballot Act, 35 & 36 Vict. c. 33, s. 9, rr. 21 & 51, post App. *Clementson v. Mason*, 9 L. R. C. P. 209.

Candidate cannot be excluded from polling booths.

**INFING-
MENT OF
SEIGNORY.**

**Municipal
elections.**

**Cockades,
&c.**

As to irregularities concerning the conduct of Municipal Elections only, see "Municipal Elections."

The wearing of cockades, ribbons, &c., is illegal, though it does not vitiate the seat. *Nottingham*, 1 O'M. & H. 246. C. P. P. Act, 1854, s. 7.

**INTER-
FERENCE OF
PEERS AND
LORDS-
LIEUTENANT.**

Though the interference of peers, ministers, and other persons in the employment of the crown in elections is a breach of the privileges of the House of Commons, and a matter into which they would certainly inquire when brought under their notice, still such unconstitutional interference is no ground of impeaching the validity of the election. See Clerk's "Practice of Election Committees," 93, 310; and see all the authorities collected in the Judgment of Keogh, J. *Galway*, 2 O'M. & H. 54.

In the *Stamford case* (1848), and the *Gloucester case* (1848), select committees were appointed to inquire into the report upon the interference of peers. (See also *Warwick case*, P. & K. 535.)

Although there is a sessional resolution of the House of Commons as to the interference of peers or Lord-Lieutenants in elections, it seems that the House of Commons would pass no direct censure upon a peer unless it was shown that he interfered after the issuing of the writ. If, however, such interference amounted to undue influence, of course it would render the peer amenable to the provisions of s. 5 of the C. P. P. Act, 1854, whenever committed.

In December, 1779, the House of Commons resolved that it was "highly criminal in any minister or ministers, or other servants under the Crown of Great Britain, directly or indirectly, to use the powers of office in the election of representatives to serve in Parliament." &c. 37 Com. J. 507.

INTER-
FERENCE OF
PEERS AND
LORDS
LIEUTENANT.

Interference
of ministers.

CHAPTER VI.

PRACTICAL SUGGESTIONS AND EVIDENCE.

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**THE
PETITION.**

IN conclusion, it may not be without use to draw the attention of those persons who are engaged in the conduct of election petitions to some of those matters of practice which are more especially connected with the management and trial of the petition.

By s. 27 of Ballot Act, 1872, that act, so far as regards parliamentary elections, is to be construed as one with the Parl. El. Act, 1868.

By the Parl. El. Act, 1868, petitions are to be presented to the Court of Common Pleas in England or Ireland, s. 5. (Now the Common Pleas Division of the High Court of Justice. See Judicature Act, 1873, s. 34.) And in Scotland to either Division of the Inner House of the Court of Session (s. 58).

Practice of
House of
Commons to
be observed.

By s. 26, "Until rules of court have been made in pursuance of this act, and so far as such rules do not extend, the principles, practice, and rules on which Committees of the House of Commons have heretofore acted in dealing with election petitions shall be observed so far as may be by the court and judge in the case of election petitions under this act." The rules made will be found in the Appendix.

By s. 50, "From and after the next dissolution of parliament no election or return to parliament shall be *questioned* except in accordance with the provisions of this act."

Jurisdiction
of the House
of Commons
not taken
away.

Questioned means questioned by election petition, by persons having an interest in raising the question and wishing to vindicate their own rights, and does not take away from the House of Commons their authority to decide on the eligibility of

a candidate, in the event of a felon, a minor, or a woman being returned. So, in the case of O'Donovan Rossa, convicted of treason-felony under the "Crown and Government Security Act, 1848," who was returned for the county of Tipperary, the House of Commons agreed almost unanimously, on February 10, 1870, "that he, Rossa, having been adjudged guilty of felony, and sentenced to penal servitude for life, and being now imprisoned under such sentence, has become and continues incapable of being elected or returned as a member of the House." A similar resolution was passed on the election of John Mitchel, a convicted felon and an alien, as member for the same county Tipperary, 3 O'M. & H. 35; and it is to be noticed that this power of declaring ineligible by resolution a person who has been elected does not involve as a consequence that the resolution of the House of Commons can per se affix a disability not previously existing. *Ibid.*, pp. 35-36. See also Parl. El. Act, 1868, s. 38 (3), post App., per Keogh, J.

If the House of Commons had not this power, it would make the rejection of a disqualified member contingent on a petition being presented. By the exercise of this power the House of Commons might refer to the consideration of a committee the seat of a member called in question by any member of the House; for instance, when a member accepts an old office of profit from the crown, and has not sought re-election, and no writ has been issued for a new election (see 6 Anne, c. 7, s. 26); or as in Sir S. W's case (see *ante*, p. 96, note *t*); or else a member already holding one office of profit receives another to hold

THE
PETITION.

**THE
PETITION.**

together with the first, and does not vacate his seat. In the two latter cases it would seem that no other mode of raising the question would be left, as these cases would not fall within the provisions of the Parl. El. Act, 1868, ss. 5 and 50.

The petition may be presented by any one or more of the following persons (s. 5) :—

Who pre-
sented by.

1. Some persons who voted *or* who had a right to vote at the election to which the petition relates.
2. Some person claiming to have had a right to be returned or elected at such election.
3. Some person alleging himself to have been a candidate at such election.

Although the words of the act say *one or more*, it is prudent, provided the petition be presented by electors, to include some larger number as petitioners, in case an objection should be taken that, though they *had voted*, they had *no right to vote* at the election.

Care should also be taken that all the petitioners should, as far as possible, be voters whose votes could not be impeached.

If the petition is presented by a candidate, it means “by any person elected to serve in parliament at an election, and any person who has been nominated as or declared himself a candidate at an election.” (s. 3).

Municipal
election
petition.

Similar provisions for questioning municipal elections by petition are contained in the Corrupt Practices (Municipal Elections) Act, 1872. (35 & 36 Vict. c. 60, post App.,) ss. 12 & following.

It was for some time a matter of doubt as to how far the procedure by petition was applicable to questioning returns at Municipal Elections.

It has been decided, however, that the Court has jurisdiction on a petition to deal with a case where the Mayor had allowed an objection to a nomination-paper (*Mather v. Brown*, 1 C. P. D. 596, *Budge v. Andrews*, 3 C. P. D. 510); or where he has improperly disallowed an objection to a nomination-paper on which he had no jurisdiction to decide. *Howes v. Turner*, 1 C. P. D. 670.

It was contended in the last case that an election could, according to the true construction of 35 & 36 Vict. c. 60, s. 12, post App., only be questioned on petition on one of the four grounds following :—

1. On the ground that the election was wholly avoided by general bribery, treating, undue influence, or personation.
2. On the ground that the election was avoided by corrupt practices or offences against the act, committed at the election.
3. On the ground that the candidate was at the time of election disqualified for election to the office.
4. On the ground that he was not duly elected by a majority of lawful votes.

And it was contended that the word “disqualified” referred to a personal disqualification only; the Court however held that the word must be read in a larger sense, and included

THE
PETITION.

What questions may be raised by petition.

Quo Warranto.

Court has wide jurisdiction on petition.

**THE
PETITION.**

the case above-mentioned : and the *ratio decidendi* would appear to give the Court the widest jurisdiction as to the questions that may be raised by petition. (See also s. 15, subs. 4, and per *Archibald, J.*, in *Homes v. Turner*, 1 C. P. D., p. 676.)

The procedure by petition only applies to cases where the *election* to an office is impeached, the remedy by *quo warranto* is therefore still in force in other cases. See *ex parte Birkbeck*, 9 L. R. Q.B. 256.

Who may be
petitioned
against.

A person who assumes to have been elected and acts accordingly, may be made Respondent to a petition. *Yates v. Leach*, 9 L. R. C. P. 605. Thus, where A. and B. were candidates for the office of Town Councillor and A. obtained a majority and was declared elected, but being disqualified refused to serve, and B. thereupon claimed to be elected and acted for a time, it was held that the proper form of proceeding was by petition, not by *quo warranto*. *Yates v. Leach*, 9 L. R. C. P. 605; and, both candidates having been made Respondents, and having given notice under s. 18, of their intention not to oppose the petition, the Court refused an application by B. to have his name struck out of the petition. *Ibid*.

In *Yates v. Leach* (*supra*) as the Respondent, B. would neither resign nor disclaim the office, it did not lie in his mouth to say that he was not properly made a Respondent (see per *Lord Coleridge, C. J.*, in *Lovering v. Dawson*, 10 L. R. C. P., at p. 714): subject however to such exceptions, the rule is that no one can be made a Respondent except a person whose seat is sought or whose

election is disputed (*Ibid.* and see Cor. Pr. M. El. Act, 1872, s. 12, and following), except the returning officer (see post p. 164).

THE
PETITION.

An unsuccessful candidate therefore cannot be made a Respondent, although he had coalesced for purposes of the election with two successful candidates whose election it was sought to upset on the ground of (*inter alia*) acts of bribery committed by such unsuccessful candidate. *Lovering v. Dawson* (No. 1), L. R. C. P. 714.

Unsuccessful
candidate
cannot be
made a re-
spondent.

And where a defeated candidate has on petition claiming the seat been declared duly elected the judge's certificate is final and he cannot afterwards be petitioned against. See *Waygood v. James, &c.*, supra p. 105.

The petition must be presented within twenty-one days after the return has been made to the clerk of the crown of election complained of (s. 6), signed by all the petitioners. Sundays are not to be included in computing the twenty-one days (*a*). *Pease v. Norwood*, 4 L. R., C. P. 235.

TIME FOR
PRESENTING
PETITION.

The petition
must be
presented
within
twenty-one
days.

And the required number of days is to be computed exclusively of the first and inclusively of the last day.

How com-
puted.

For purposes of calculating the time within which the petition is to be presented the return is not considered as made until the writ with the certificate of there turning officer endorsed thereon reaches the hands of the clerk of the crown in chancery in such a manner that he may take proper action thereon.

(*a*) As to the last day falling on a holiday, see r. 4 of Add. Gen. R. 1875, post App.

**THE
PETITION.**

When may
be pre-
sented
within
twenty-
eight days.

See Ballot Act, 1872, s. 2, and schedule 1, r. 44.

Hurdle v. Waring, 9 L. R. C. P. 435.

If a petition specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance of or in furtherance of corrupt practices, the petition may be presented at any time within twenty-eight days after the date of that payment (s. 6) (b).

“There is a clause in the Parl. El. Act, 1868, under which, if R. B. or one of his agents, or S. L. or one of his agents, pay in respect of the election one shilling of money at any time between this present hour and the last hour of the session of this present Parliament, not only in this year, not only in the next year, but up to the last hour when it may be finally dissolved at the approach of a new election, for twenty-eight days after every individual payment a new petition can be presented, not even to Parliament, but to the Court of Common Pleas, and if that individual payment be proved, the seat of the sitting member is just as effectually gone as it would be on this inquiry: There are two parties to every pecuniary transaction—there is the donor and there is the donee; and though I am perfectly satisfied that neither of the candidates intend making any such payment, let me

(b) This clause is framed from a sessional order of the House of Commons, 1832. See *Durham case*, B. & Arn. 213.

tell the one and the other, that if he is pressed by persons who wish to carry on a system of corruption, he is bound by no feeling of honour to contribute to their rapacity ; and let me tell him also, that if he at any time pays one shilling in consideration of this last election, he can be *again* petitioned against. If a far-thing is paid in consideration of a vote at the last election to any one here, during the existence of the Parliament now sitting, a new petition can be presented, and the whole thing can be again made the subject of investigation." *Galway*, per *Keogh, J.*, Judgments, 341. See 1 O'M. & H. 305.

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PETITION.

In the evidence of Willes, J., before the select committee on Parl. and Mun. Elections (p. 44), the learned judge stated his impression decidedly was (though to prevent doubt the sections should be amended) that under the Parl. El. Act, 1868, although the certificate of a judge was final as to a petition before him, *and also final of what could with due diligence have been brought forward under that petition*, the certificate was no bar to another petition being presented within twenty eight days after a *new* act of corruption had been disclosed. But it would appear that the evidence of the learned judge should be taken with this qualification, that the new act of corruption must plainly refer to an act by the *personal* procurement of the member or with his privity ; it would also seem that the words "on his account" equally bear the same interpretation, and do not refer to acts sub-

**THE
PETITION.**

sequent to the election done by an election agent without the member's knowledge.

"The agent that I should consider would affect the seat by his act after the election would be a person who did that act with the privity of the member. A person who merely was an agent in the sense that he had been an agent in the election would not, in my judgment, affect the seat by any corrupt act of his done after the election without the privity of the member." *Salford*, per *Martin, B.*, 1 O'M. & H. 139.

How far
conduct of
whole elec-
tion open to
inquiry on
twenty-
eight days'
petition.

When a petition is presented under the provisions of this section within the additional twenty-eight days, the question has been raised but not decided whether this has the effect for all purposes of bringing the inquiry down to the date of the twenty-eight days, so that notwithstanding the lapse of the twenty-one days, the judge is at liberty to go into a full inquiry with a view to considering the question of the seat as to all the corrupt practices that took place at the election, or whether the judge is to confine his attention to the subsequent payments, and to such evidence as throws light upon the nature and character of those payments, in order to show that they were payments made in pursuance or furtherance of corrupt practices. *Keogh, J.*, seems to have inclined to the former opinion; see *Galway*, 1 O'M. & H. 341. *Mellor, J.*, to the latter, *Kidderminster*, 2 O'M. & H. 170, 172. In the *Kidderminster* case it was clearly established that the new acts of corruption were done with the privity of the member.

A copy of the petition is to be sent by the prescribed officer to the returning officer of the place to which the petition relates (s. 7), and notice of the presentation of the petition and of the nature of the security, together with a copy of the petition shall be served by the petitioner on the respondent within five days after presentation (s. 8).

THE
PETITION.
Proceedings
on present-
ing petition.

The petition is by General Rule III. to be divided into paragraphs—corrupt practices (and in a Municipal Petition “offences against the act” if any) being stated in separate paragraphs; and the form of petition is set out in General Rule V. (For special forms of petitions, see App.) The petition should be on parchment.

Form of
petition.

General Rule LX. provides that “no proceeding under the Parl. El. Act, 1868, shall be defeated by any formal objection.” This would apply to any technical or formal objection where the matters objected to can be rectified by the judge without prejudice to either side. *Shrewsbury*, 19 L. T. Rep. N. S. 499.

Formal ob-
jection not
to be fatal.

Should there be any special charge, like the alleged corrupt agreement in the *Coventry case* (see Corrupt Practices), it had better be specially alleged in the petition.

Special alle-
gation in
petition.

If general riot or general intimidation is relied on, it had also better be specially alleged in the petition, as it was doubted by Martin, B., at Cheltenham, whether general intimidation could be otherwise gone into. It was admitted, however, by Blackburn, J., at Stafford.

In the *Greenock case* (1 O'M. & H. 248), Lord Barcaple refused to admit evidence of illegality in the position of one of the polling booths, no

Acts com-
plained of to
be charged
in the
petition.

**THE
PETITION.**

Special allegation
against re-
turning
officer.

special allegation charging this being contained in the petition.

By s. 51, Parl. El. Act, 1868, also by s. 13, subs. 6, Corr. Prac. Mun. El. Act, 1872, where a petition complains of the conduct of a returning officer, he shall be deemed to be a respondent. Under the Ballot Act, 1872, owing to the many duties that are cast on that officer, such a case is now likely to arise frequently (c).

Before that Act it arose in the *Warrington case*, 1 O'M. & H. 42, where there were allegations in the petition as to irregularities at the election. Martin, B., in that case ruled that in his opinion such irregularities did not void the election, and if the returning officer, by reason of the petition against him, had incurred any costs, he ought to be reimbursed.

In *Pickering v. Startin*, 28 L. T. N. S. 111, a charge against the returning officer and his presiding officers was specially alleged in an amended petition by leave of the Court of Common Pleas. In that case the *barrister* held that the special allegation made the returning officer, under s. 13, subs. 6, a respondent; that his presiding officers had no *locus standi* to appear and defend themselves; but that the returning officer would under certain circumstances be liable for the acts of his deputies, and that he might in his discretion award costs either for or against such officer, following the ruling of Martin B., in the *Warrington case*. See also "Returning Officer,"

(c) Under what circumstances non-compliance with Ballot Act rules or mistake in forms will not invalidate election, see Ballot Act, 1872, s. 13. See "Conduct of the Election."

"Penalties;" and *Pickering v. James*, 8 L. R. C. P. 489.

THE
PETITION.

Although a petition must ordinarily be presented within twenty-one days, the court or a judge at chambers, under certain circumstances, have added after that period to the allegations contained in that petition; as in the case of *Pickering v. Startin*, 28 L. T. N. S. 111, where the questions sought to be raised by the proposed additions were not merely technical points, but seriously affected the result of the election, and where such additions could not have been inserted in the original petition, owing to want of information, such as where an inspection of votes being allowed, the petitioner discovered that certain counterfoils of voting-papers were not marked as directed by the Ballot Act, 1872, s. 2. See also *semble* in *Aldridge v. Hurst*, 1 C. P. D. 410. But in *Maude v. Lowley*, 9 L. R. C. P. 165 (a Municipal Petition) it was held that where the effect of an amendment really would be to introduce a charge of a new offence, the Court has no jurisdiction to allow the amendment after the expiration of the twenty-one days allowed for presenting a petition. See s. 13, subs. 2 of 35 & 36 Vict. c. 60, post App.

When petition may be amended.

By adding allegations.

The court or a judge at chambers may order clauses in a petition to be struck out. See *Stevens v. Tillett*, 6 L. R. C. P. 147; 2 O'M. & H. 38; *Kidderminster*, 2 O'M. & H. 170.

By striking out allegations.

These would be interlocutory questions, and matters within the General Rule XLIV.

And it appears to be competent to the court at any time to allow an amendment by striking out allegations in a petition, where it is satisfied that

Time for striking out allegations.

THE
PETITION.

Amendment
by striking
out a claim
to the seat.

no injurious result, or a beneficial one, will follow.
Aldridge v. Hurst, 1 C. P. D. 410.

On the other hand, the court, following the practice of the election committees, will not after the expiration of the time limited for presenting a petition allow an amendment by striking out a claim to the seat and allegations applying to a scrutiny which would be dependent thereon, on the ground that this would affect the rights of the constituency —(Ibid.) ; as such a claim renders the petitioner liable to have recriminatory charges made against him; and other voters who might before the expiration of the twenty-one days have presented a petition claiming the seat for a person who may be the duly elected representative (see 31 & 32 Vict. c. 125, s. 53, &c.) might be prevented from doing so, (Ibid. p. 412).

Seemle,
governed by
rules as to
withdrawal.

To withdraw such a claim it seems to be necessary to comply with the formalities prescribed as to withdrawing a petition (see post App.), the petition being for this purpose regarded as really two petitions, one a petition questioning the return and the second claiming the seat. *Aldridge v. Hurst*, 1 C. P. D. 410, 415.

In such a case a petitioner when unable to abandon his claim may for purposes of saving costs give notice to the respondent that he intends to offer no evidence in support of the claim to the seat. (Ibid., p. 416) Per *Grove, J.*

Taking in-
sufficient
petition off
the list.

It would seem that a petition which does not disclose any facts which vitiate the return or give the court jurisdiction may be ordered to be taken off the list. See the *Hackney case*, 2 O'M. & H. 78. The proceeding is by summons at chambers

(Ibid.) or by motion in the Common Pleas Division.
The *Tipperary case*, 3 O'M. & H. 21.

**THE
PETITION.**

A petition drops if a dissolution occurs before it is tried. See "Withdrawal and Abatement," post App. A petition drops on a dissolution.

There may be more petitions than one against the same respondent. See *Poole*, 2 O'M. & H. 123; *Yorkshire (S. W. Riding)*, 1 O'M. & H. 213. For mode of trial, see post App. More than one petition against same candidate.

At the time of the presentation of the petition security to the amount of £1000 must be given on behalf of the petitioner, either by recognizance to be entered into by any number of sureties, not exceeding four, or by a deposit of money, or partly in one way or partly in the other (s. 6).

**RECOGNIS-
ANCE AND
DEPOSIT.**

In *Pease v. Norwood* (4 L. R., C. P. 235) it was held "that £1000 is all that can be required, though the petition is against the returns of two or more members." Objections to and determination of same.

"That petitioners themselves cannot be sureties, though that does not render the security invalid; but is an objection to its sufficiency under s. 8, and may be amended by a deposit of money under s. 9."

As to recognizances and security and objections to the same, see ss. 8 and 9, and General Rules XVIII.—XXVIII. inclusive, also General Rules XVI. and LVI., together with the Add. Gen. Rules I.—VI. Orders made by a judge at chambers, or summonses under these rules concerning sufficiency of security, &c., are subject to appeal to the court. *Pease v. Norwood*, 4 L. R., C. P. 235. For the corresponding rules in Municipal cases, see Appendix.

RECOGNIZ-
ANCE AND
DEPOSIT.

By the 6th section of the Parliamentary Elections Act, 1868, the deposit becomes security for the payment of all costs, charges, and expenses that may become payable by the petitioner to any person summoned as a witness on his behalf, or to the member whose election or return is complained of.

Under General Rule XVI. the deposit is to be paid into the Bank of England, and by the additional General Rules all claims upon the fund are to be disposed of by the court or a judge.

By General Rule XVIII. the recognizance may be acknowledged before a judge at chambers or the Master in town, or a justice of the peace in the county. In the *Shrewsbury case*, 19 L. T. Rep. N. S. 499, the Master held that a recognizance acknowledged before a magistrate in London was bad.

By Gen. Rule II. of January, 1875 (this Rule being the same for Parliamentary and Municipal cases), it is provided :—

“The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof.”

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LARS.

By General Rule VI. :—

“Evidence need not be stated in the petition, but the court or a judge may order (*d*) such particulars as may be necessary to

(*d*) As to the form of order, see *Salford*, 19 L. T., Rep. N. S. 500.

prevent surprise and unnecessary expense, and to ensure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas, and upon such terms as to costs and otherwise as may be ordered."

PARTICULARS.

A similar Rule (r. VI. of Municipal Gen. Rules of Mich. Term, 1872) applies to municipal petitions. See post App.

Application for particulars can be made to any judge at chambers; but the judges direct that the application shall be made to an election judge, if practicable (*Per Byles, J.*, at chambers), and see General Rule XLIV. And in this respect no alteration is introduced by 42 & 43 Vict. c. 75. Post App.

Application
for order for.

It was held in *Beal v. Smith*, 4 L. R. C. P. 145:—

"Under the Parl. El. Act, 1868, it is enough to allege generally in the petition that 'the respondent, by himself and other persons in his behalf, was guilty of bribery, treating, and undue influence, before, during, and after the election.'"

When to be
delivered.

"Upon a summons for particulars for the names, &c., of the 'other persons,' and of the date of such alleged act of bribery and treating, and the names of the persons bribing and of the persons bribed and treated, and the times and nature of the alleged acts of treating, and of each alleged act of undue influence, the judge at chambers ordered 'that the petitioners shall *three* days before the day appointed

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LARS.

for the trial, leave with the master, and also give the respondent or his agent, particulars in writing of all persons alleged to have been bribed, of all persons alleged to have been treated, and of all persons alleged to have been unduly influenced:—*Held*, that the judge had exercised a right discretion; and the court declined to interfere.”

Originally three days before the day appointed for the trial was the time usually fixed for the delivery of particulars, see *Beal v. Smith* (supra); but Bramwell, B., was the first to extend the time to five days in the *Bristol case* (1870); see also the *Shrewsbury case* (1870); after the General Election of 1874 the judges allowed a further time, generally a week, with leave to add in certain cases extended and additional particulars up to three days before the trial.

Inasmuch as under the additional rules of Jan. 1875, six clear days before the trial is the time now fixed for the delivery of Scrutiny Lists, it would now seem to be a convenient course if the time usually fixed for delivering particulars were to be six days clear also.

The time for giving particulars will not be diminished on the ground that the witnesses may be tampered with, as the judge has power in such an event to adjourn the trial. *Drogheda*, 19 L. T., Rep. N.S. 528. See also *Galway (County)*.

In obtaining an order (e) for particulars, it is

Form of
order.

(e) The order made by Blackburn, J., in the *Hereford case*, was in the above form; see also form of order in *Moude v. Towley*, 9 L. R. C. P. 165.

important to obtain an order compelling the petitioners to give the names not only of those who are bribed and those unduly influenced, but the names of the bribers and intimidators as well ; and to obtain an order not only for the names of the treated but the names of the treaters, and a list of the places where the alleged treating took place.

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LARS.

Orders for particulars as full as these have been frequently made in the parliamentary election petitions of 1874, and in the municipal election petitions which have arisen subsequently.

In the *Brecon case* (No. 2, not reported), where the names of bribers and treaters had not been asked for in the first particulars, Lush, J., at chambers ordered them to be added, though the application was not made until two days before the day fixed for the hearing of the petition.

In the *Gloucester case* (not reported), Blackburn, J., ordered the names and addresses of the personators and those who were alleged to have procured such personation to be given.

In framing the particulars, care should be taken to include *every* case of corrupt practices intended to be relied on at the trial, otherwise a judge at the trial of the petition will require a summons to be taken out on affidavit asking for leave to add further names and cases, and can impose such terms with reference to costs, &c., as to him may appear fit, or may even go so far as to adjourn the hearing of the case at the cost of the parties applying to add to their particulars.

Evidence of
cases not
included in
the particu-
lars.

It must depend on the circumstances of each particular case whether the judge will permit fresh

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LARS.**

cases to be gone into or fresh names not included in the particulars to be dealt with at the trial, and on what terms he will do so; thus, where during the trial evidence was offered (and objected to) of the bribery of a voter not named in the particulars, the judge admitted the evidence, at the same time promising the respondents the amplest opportunity of meeting the case if necessary. The *Waterford case*, 2 O'M. & H. 4. And a similar course was taken by Bramwell, B., in the *Bristol case*, 2 O'M. & H. 27. See also *Stalybridge*, 1 O'M. & H. 72. And this will be more readily done in the case of evidence as to undue clerical influence, bribery, or the employment of mobs, than in other cases. The *Longford case*, 2 O'M. & H. 8 & 9. But will not be allowed where the omission in the particulars appears merely to be due to want of proper inquiry on the part of the petitioner's agent at an early stage of the proceedings. The *Longford case*, 2 O'M. & H. 9.

Where particulars were sought to be added *after the trial had begun*, the judge said that he would only take the application on summons, and should require the affidavit to state when the alleged act was first known. *Cheltenham*, 1 O'M. & H. 63; 19 L. T., Rep. N. S. 820; *Longford* (supra); *Wigan*, 1 O'M. & H. 189.

Where there are allegations of general bribery, general treating, and general intimidation or riot, evidence of names not in the particulars will in the discretion of the judge be received, on the ground that such evidence is evidence of general corruption, which is almost impossible to specify more exactly. *North Durham*, 2 O'M. & H. 152; *Taunton*

2 O'M. & H. 69; *Beverley*, 1 O'M. & H. 143-145. PARTICU-
LARS.

Care also should be taken not to include in the particulars a number of charges of corrupt practices against persons which are altogether unlikely to be substantiated. In the *Hereford case*, where 184 cases were included in the particulars and only five gone into, and none proved, Blackburn, J., said :—

Must not
make unne-
cessary per-
sonal charge

“ It was obvious that that could not have been done except for the purpose of baffling the objects of giving the particulars, and it is obvious it must have given the respondents a great deal of unnecessary trouble.” *Hereford*, 1 O'M. & H. 197.

And his lordship declined to allow costs to the petitioners, who were successful. See also *Blackburn*, 1 O'M. & H. 205; *Youghal*, 1 O'M. & H. 295.

Where the particulars were unnecessarily voluminous and calculated to increase expense, costs were disallowed by Keating, J., *Norwich*, 2 O'M. & H. 42.

Must not be
too volumi-
nous.

Bramwell, B., refused to make any order for costs in the *Bristol case*, although the Court of Common Pleas had held the election void, and the court above refused to grant a rule to annul such order, on the ground that the discretion as to costs should be exercised by the judge, who, having tried the petition, knew all the circumstances of the case. *Britt v. Robinson*, 5 L. R. C. P. 576.

And if the respondents are prejudiced by the insufficiency of the particulars, an adjournment at the petitioner's expense will, if necessary, be ordered, and the matter may be taken into con-

PARTICU-
LARS.

sideration by the judge in the question of costs. *Penrhyn*, 1 O'M. & H. 127.

As to giving evidence as to persons who are not mentioned by name in the particulars, but only referred to as members of a class, *e.g.*, "delegates, council, and other officers of the Miners' Association." See *North Durham*, 2 O'M. & H. 153.

Particulars
not delivered
in time.

Where a list of particulars had not been delivered by the time prescribed by the order, *Martin, B.*, ruled that it was inadmissible. *South West Riding of Yorkshire*, 1 O'M. & H. 214.

It is safer to deliver the particulars in office hours.

Sundays should be excluded in the computation of time, although *Martin, B.*, at *Brecon*, doubted whether Sunday, for the purposes of a judge's order, need be excluded. See also *Add. R.* 1875, rr. 3, 4.

Particulars'
lists required
as well as
scrutiny lists.

Where a seat is claimed, and there are offers of bribes, attempts to unduly influence, &c., the names of which could not possibly be included in the six day scrutiny particulars under General Rule VII. (f), a separate particulars' list will have to be applied for.

Locality in
which the
petition is
to be tried.

The petition is tried within the limits of the district in which the election was held (*Parl. El. Act*, 1868, s. 11, subs. 11), unless the court see special reason for changing the venue, as in the *Sligo case*, where, on the grounds of intimidation, the trial was held at *Carrick-on-Shannon, Sligo*, 1 O'M. & H. 300.

By the *Parl. El. Act*, 1868, s. 2:—

(f) See *Guildford*, 19 L. T., Rep. N. S. 528.

“The expression ‘the court’ shall for the purposes of this act in its application to England, mean the Court of Common Pleas at Westminster, and in its application to Ireland the Court of Common Pleas at Dublin (g); and such court shall, subject to the provisions of this act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon, as it would have if such petition were an ordinary cause within their jurisdiction.”

DEFINITION
AND JURIS
DICTION OF
THE COURT
FOR TRIAL C
PETITIONS

Having regard to the above section, inspections of documents and the usual proceedings for a discovery could be enforced either by summons at chambers or a motion in full court. In the *Stafford case*, no vouchers or detailed statement having been returned for two large sums in the election accounts contrary to 26 & 27 Vict. c. 29 (see Election Accounts), Blackburn, J., allowed the petitioners to have an inspection of all orders and vouchers in the possession of the respondents which had not been returned, and to take copies thereof. *Seem*, also, that interrogatories could be administered.

Discovery of documents.

Under the same section a commission may be issued to examine a witness alleged to be ill. *Stalybridge*, 19 L. T., Rep. N. S. 703; 1 O’M. & H. 57.

Commission to examine witness.

The evidence of a witness too ill to leave his bed was also taken at *Hereford* by the registrar; counsel for the petitioners and respondents being present and conducting the examination and cross-examination.

(g) As to Scotland, see s. 58, subs. 1, Parl. El. Act, 1868.

**TRIAL OF
PETITION.**

Under the same section, Lush, J., adjourned the hearing of the petition of *Brecon* (2) in consequence of the absence from Christmas to April of a material witness.

**Inspection of
documents
before trial.**

When for the purposes of a petition an inspection of documents is necessary (Ballot Act, 1872, schedule I, rules 40 and 41, post App.), an application should be made on affidavit, stating the necessity for the inspection of the documents (*h*). No inspection of documents would probably be allowed until a petition had actually been presented—*i.e.*, not merely for the purpose of getting up a case. See the *Manchester* (mun. election) case mentioned in "Notes of the Week," L. T., Nov. 23, 1872.

The practice of granting inspection of documents under the Ballot Act is to be regulated by the same rules as in ordinary cases, subject to proper precautions to secure secrecy of voting. (*Stowe v. Jolliffe—Petersfield*—9 L. R. C. P., at p. 454. *Per* Brett, J.)

**What documents may
be inspected.**

The documents which may be inspected (Ballot Act, 1872, rules 40 and 41) are—

- (1.) Rejected ballot-papers.
- (2.) Counted ballot-papers.
- (3.) Counterfoils.

Care, however, must be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid (Rule 41).

**How application to be
made.**

It would seem that the application for the inspection of rejected ballot-papers may be made to a

(*h*) As to municipal elections, see pt. ii. sched. I, rule 64.

judge at chambers (see rule 40, *Stowe v. Jolliffe—Petersfield*—9 L. R. C. P. 446 & 456, *Per Grove, J., Tyrone*, 7 Ir. R. ; C. L. 190. 21 W. R. 627) ; From his decision an appeal would lie to the full court ; but a judge at chambers would have no power to order inspection of counted ballot-papers or counterfoils (Ibid., and see r. 41) : in that case, therefore, application should be made to the court.

TRIAL OF
PETITION.

In the *Tyrone case*, 7 Ir. R., C. L. 190 : 21 W. R. 627, an order was made that the Clerk of the Crown should open the sealed packet of rejected ballot-papers, and permit the petitioner to inspect certain ballot-papers alleged to have been wrongly rejected by the returning officer on the ground that there were marks on them by which the voters could be identified : the petitioner, however, was not to see the numbers on the back of the ballot-papers corresponding with those on the counterfoils. Inspection.

The Court will require a strong case to be made on affidavit before granting inspection of ballot-papers or counterfoils. (*Stowe v. Jolliffe*, 9 L. R. C. P. 446.)

If a petition alleges that the sum total of the votes has been wrongly counted by the returning officer, his decision as to the total of the poll may be reviewed on petition, and the votes re-counted before the judge, as it is not necessary to discover for whom any particular voter has voted. *Renfrem*, 2 O'M. & H. 213.

Other documents seem open to inspection, under certain regulations (Rule 42), without an order, and the petitioner will be allowed to inspect the marked register of voters whether the petition does

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or does not pray for a scrutiny. See Ballot Act, sch. 1, part 1, r. 42. *James v. Henderson*, 43 L. J. C. P. 288, following *Stowe v. Jolliffe* (No. 1), 43 L. J. C. P. 143; 9 L. R. C. P. 446.

And where the marked register was by mistake returned to the Clerk of the Crown in the same sealed packet with the counterfoils, the Court made an order for its inspection. *Stowe v. Jolliffe*, 9 L. R. C. P. 459.

The form of application in such a case (*Ibid.*, p. 459, *per* Denman, J.) is not for a mandamus, but for an order for inspection; and see form of order (*Ibid.*, p. 460).

There does not appear to be any authority to order inspection of the instrument for making the official mark on ballot-papers, though it would probably be produced on a trial.

By Rule 64 of the First Schedule of the Ballot Act (post App.), provision is made as to the production of ballot-papers at municipal election petitions, but it is doubtful (see *per* Blackburn, J., in the *Gloucester* case, 2 O'M. & H. 60) whether power is thereby given to a judge on the trial of a parliamentary petition to order production of ballot-papers used at a municipal election.

As to inspection of and use at the trial of the counterfoils, marked register, and voting-papers for purposes of a prosecution for fraudulently placing ballot-papers in the ballot-box contrary to 35 & 36 Vict. c. 33, s. 3, see *Reg. v. Beardsall*, 1 Q. B. D. 452.

Inspection of
election
accounts.

The returning officer should in case of a petition allow both sides to take copies of the statement of election accounts (see post App.), though it is

doubtful whether he is bound to do so. *Durham*, 2 O'M. & H. 134.

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There does not appear to be any objection (see conclusion of Rule 41) to the discovery for which candidate a vote was given immediately it has been proved the elector has voted, and that vote has been declared to be invalid; such discovery is not only essential in a scrutiny, but would be an important link in the chain of evidence that the corrupt act in question was done by the agent of the candidate with whom it is sought to be connected, if the vote was given for that candidate.

During trial.

The enactments with respect to the trial of petitions under the Parl. El. Act, 1868, are all contained in s. 11, and 42 & 43 Vict. c. 75, post App. In subs. 16 of s. 11, the case raised by petition can be stated by way of special case. *Ryder v. Hamilton*, 4 L. R., C. P. 559; *Athlone*, 2 O'M. & H. 185; *Mayo*, 2 O'M. & H. 191.

Petition can
be stated as
a special
case.

An order for the case raised to be stated as a special case may be made on summons before a judge at chambers. See General Rules, Mich. 1868, r. 37.

Order made
on summons.

Where there are more than one petition against a candidate they may be tried together. *Poole*, 2 O'M. & H. 123; *Yorkshire (S. W. Riding)*, 1 O'M. & H. 213.

Two peti-
tions against
same candi-
date tried
together.

By 42 & 43 Vict. c. 75, s. 2, it is provided as follows:—

Trial is now
before two
judges.

“The trial of every election petition and the hearing of an application for the withdrawal of an election petition shall be conducted before two judges instead of

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one, and the Parliamentary Elections Act, 1868, shall be construed as if for the purpose of hearing and determining the petition at the trial, and of hearing and determining any application for the withdrawal of an election petition, two judges were mentioned, and additional judges shall, if necessary, be placed on the rota accordingly."

On the sitting of the court, proceedings are commenced by the registrar (one of whom, by General Rule XXXIX., is in attendance upon each judge) reading the petition.

The registrar also produces all the affidavits, copies of orders and other documents, &c., directed by the rules to be filed with him.

After that the counsel for the petitioners opens his case, and in doing so, should take care to bring forward every case of corrupt practice on which he intends to rely, but he need not go into minute details. The *Galway case*, 2 O'M. & H. 48.

Formal
proofs.

The formal proofs as to an election having taken place are now usually admitted without calling witnesses to prove them. The same mode of procedure applied at Gloucester, under the Ballot Act, 1872, at the trial of the petition before Blackburn, J.

Thus, in the *Coventry case*, on counsel for the respondents objecting to the admission of formal matters, Willes, J., said, "I shall not require the election to be proved in any of these cases; the poll-books are here, and they tell me that an election was held." *Coventry*, 20 L. T., Rep. N. S. 406.

The judge usually hears the evidence by taking one class of cases before another is entered into; but in the *Gloucester case* (1873), Blackburn, J., decided that when a witness was under examination he should state the whole of the circumstances within his knowledge without leaving the box.

If the seat is claimed, recriminatory evidence is admissible (i). (See "Scrutiny," p. 105)."

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Recrimina-
tory evi-
dence.

By the Parl. El. Act, 1868, s. 17 :—

"On the trial of an election petition under this act, unless the judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of

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Evidence
of corrupt
practice may
be given
before proof
of agency.

(i) Although recriminatory evidence is inadmissible where the seat is not claimed, if, however, a petition be presented, either by the defeated candidate or by electors without claiming the seat, which unseats the sitting member and causes a fresh election, and if, on such election, or any other subsequent election *during the same parliament*, the defeated candidate stands again, then corrupt practices alleged to have been practised by him at the first election may be inquired into. See Mr. Justice Willes' evidence (p. 447, Select Committee on Parl. and Mun. Elections), where the learned judge said—"The law is clear that during the same parliament a person who has been as a candidate guilty of bribery at an election cannot hold his seat against a petition, and that if he be returned, you may bring up against him anything he has done at any former election *which could not have been brought up against him on some former petition.*" But by the *Norwich case* (6 L. R. C. P. 147), it seems conclusively laid down that even if recriminatory evidence be entered into by the respondent, that is no bar to corrupt practices at that election being again charged against the petitioner on any future occasion. Though Bovill, C. J., in his judgment stated it was his impression that any cases investigated previously should not again be gone into, Willes, J., also concurred in that view. See *post* as to distinction between the *report* of a judge and *certificate*.

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the candidate in respect of such corrupt practice."

This section gives discretion to the judge, who may direct counsel to change the order of proceeding, *per* Willes, J. *Guildford*, 1 O'M. & H. 14.

This rule was acted on by Bramwell, B., in the *Bristol case*, 22 L. T., Rep. N. S. 732, and 2 O'M. & H. 29; where collective acts of bribery were alleged against one person, it was held preferable, before going into the alleged acts, to give proof of that person's agency.

But not if the evidence be of something which took place after the election.

But evidence as to a conversation which took place between an agent and a voter *after* the election will not be admitted without proof that the agency continued, if some considerable time have elapsed. See *Longford*, 2 O'M. & H. 12, where the conversation had taken place twenty-six days after the election; see also *Waterford*, 2 O'M. & H. 3; *King's Lynn*, 1 O'M. & H. 208. Evidence will, however, be admitted of anything that took place on the polling-day itself, even though after the close of the poll, as being indicative of what took place during the day. *Longford*, 2 O'M. & H. 11; *Galway*, *Ibid.* p. 49.

unless on the polling day itself.

In some cases the admissibility of the evidence tendered will depend on what the evidence is. In such a case the Court will hear the evidence, and admit or reject, according to what is the nature of it. *Galway*, 2 O'M. & H. 49, 50; and see post p. 194.

Order for attendance of witness, when granted.

By r. 41 of General Rules, Mich. Term, 1868 (post App.), the Court may make an order to compel the attendance of a person as a witness.

An application for such an order, to be successful, must be supported by evidence that unsuccessful attempts have been made to serve the witness with a subpoena (see *Waterford*, 2 O'M. & H. 3), or other evidence of the refusal of the witness to attend (*Longford*, 2 O'M. & H. 12; *Taunton*, 2 O'M. & H. 70)—*e.g.*, that he has been called on his subpoena and not answered, was in the *Galway case*, 2 O'M. & H. 50, considered sufficient. See also *Norrnich*, 1 O'M. & H. 8.

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If a witness persistently keeps out of the way, the judge may, in his discretion, adjourn from time to time. *Stroud*, 2 O'M. & H. 108.

The judge may order a writ of *subpœna ad testificandum* to be issued to compel the attendance of witnesses out of the jurisdiction. See 17 & 18 Vict. c. 34, s. 1; *Cashel*, 1 O'M. & H. 187; *Roscoe's N. P.*, 14th Ed., p. 152.

Subpœna ad testificandum to witnesses out of jurisdiction.

Where, on the close of the petitioner's case, a witness, though called on his subpoena, did not appear, the judge stated that up to the last moment of the trial he would hear any application for the examination or re-examination of any witness, if he was satisfied that it was *bond fide*, and could not have been done before. See *Waterford*, 2 O'M. & H. 4; and see further remarks to the same effect in the second *Waterford case*, 2 O'M. & H. 26.

Witness not appearing, his examination may be deferred.

A witness cannot refuse to answer questions on the ground that his answers may tend to criminate him (see 26 Vict. c. 29, s. 7, post p. xiii., and Parl. El. Act, 31 & 32 Vict. c. 125, s. 33, post p. xxviii.); but where a witness shall answer every question relating to the matters as to which he shall be required

Indemnity of witness, 26 Vict. c. 29, s. 7.

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Answers must be full and trustworthy.

The certificate will be refused if the answers given are not full and trustworthy. *Sligo*, 1 O'M. & H. 301, and see *supra* p. 82, &c.

Legality of offers of rewards for evidence.

As to the legality of offers of rewards for evidence, see *Mallon*, 2 O'M. & H. 19.

Rules the same as at *nisi prius*.

The same rules with respect to evidence which govern cases at *nisi prius* are applicable to the trial of election petitions. But although the rules are the same, nevertheless isolated cases, particularly as to the admissibility of evidence of a documentary nature, have occurred during the trials of election petitions, to which it may be useful to call attention.

Unstamped promissory note.

Thus, in the *Windsor case*, it was ruled that the act which makes stamps unnecessary in criminal proceedings applied in the trial of a petition, inasmuch as an election inquiry is of itself a proceeding of a quasi criminal character. *Windsor*, 1 O'M. & H. 6.

Documents in possession of respondent.

In the *Bradford case*, it was ruled that petitioner might call for any document in the possession of the respondent, and that document was *prima facie* evidence, though of course the respondent might give any explanation of it afterwards. *Bradford*, 1 O'M. & H. 31.

In the *Westminster case*, a canvasser was allowed to be asked how many promises he had received, although the question was objected to on the grounds that it involved hearsay upon hearsay, since it was argued (although Martin, B., held it a most remote inference) that the question might be put, because if it turned out that the witness had been told that there was a large majority of promises for the respondent, he would, as an agent for the conduct of the election, have been less likely to consider it necessary to resort to corrupt practices in order to carry the election. *Westminster*, 1 O'M. & H. 95.

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Evidence admissible of number of promises made to canvasser.

When a witness for the petitioner was cross-examined, with a view to shake his credit, a witness was called by the respondents to contradict what he had said in cross-examination, whereupon Blackburn, J., stated that although at *nisi prius* the rule was established that a collateral issue could not be gone into, he did not think that that rule could be adhered to in election inquiries. *Norfolk (N. Division)*, 1 O'M. & H. 239.

Collateral issue, where it can be inquired into.

And where a witness called to prove that he had been bribed refused to admit it, another witness was allowed to be called to prove that he had before stated that he had been bribed. *Lichfield*, 1 O'M. & H. 24.

Evidence of intention to pay bribes cannot be given, as a new petition can be presented if such intention is carried out. *Galway*, 1 O'M. & H. 304.

Evidence of intention to pay bribes inadmissible.

In the *Windsor case*, where evidence was sought to be given of what occurred at a previous election, at which the respondent had not been a candidate, Willes, J., stated, "that at all times he was reluc-

Evidence, previous election.

EVIDENCE. tant to go into matters connected with another election, but more particularly when the person whose return was then under inquiry had not then been a candidate." *Windsor*, 19 L. T., Rep. N. S. 615, and *semble* that acts of personation committed at a previous election cannot be gone into; *Stroud*, 3 O'M. & H. 7, and see post p. 201; and see Ballot Act, 1872, s. 24, post App.

Where, however, the respondent had been guilty of bribery at a previous election a few months before at which he had been an unsuccessful candidate, evidence of this was received, and proved sufficient to unseat him. *Stroud*, 2 O'M. & H. 179.

Intimidation
thereat, if
effect
continues.

Evidence is, however, admissible to show that the respondent after a former election had evicted tenants who did not vote for him, this being intimidation which will vitiate the election if the effect of it is shown to have continued. *Windsor*, 2 O'M. & H. 90, 91.

Payment for
drink after
former
election.

Similarly where, after a former election, the respondent paid bills for drink supplied to voters before the election, this is evidence that a similar payment for beer at the present election is the result of a corrupt agreement existing prior to the election, so as to bring the case within C. P. P. Act, 1854, s. 4. See *supra* pp. 27, 35. *Poole*, 2 O'M. & H. 124, and compare *Brecon*, 2 O'M. & H. 43.

Where par-
liamentary
and mun-
icipal elec-
tion closely
connected.

Similarly, where evidence is given showing that the parliamentary election and a previous municipal election were so connected as to be really parts of one political contest, the members in the parliamentary contest were held bound by the acts of their agents in the municipal contest, *Southampton*, 1 O'M. & H. 226; and where the same person had been a

candidate at an election held only a short time previously, the fact of a particular person having acted as his agent at such previous election is admissible evidence from which his agency at the present election may be inferred. *Waterford*, 2 O'M. & H. 2 (see *supra* p. 61). As to giving evidence of the conduct of a candidate or his agents at a former election, where the former election has been petitioned against, see post (*Report as to Bribery, &c.*).

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Agency may be inferred from agency at a previous election.

As to personation at a previous election, see post p. 201.

It is unadvisable to employ an election agent who, although he does not come expressly within the terms of s. 44 of Parl. El. Act, 1868, may nevertheless be so closely connected with corrupt practices in the constituency as to render the candidate liable for acts committed by him prior to his having been actually retained as an agent.

Evidence of prior corrupt acts of agent.

Thus, if a sitting member has employed an agent to distribute charities without check in a constituency, in the hope that it will influence the future election, more especially if that election is imminent, and that sitting member does not seek re-election, it would be an unadvisable and dangerous policy on the part of the fresh candidate to employ that agent at the ensuing election, as probably his acts when agent for the sitting member would be admitted as evidence against the candidate who subsequently adopted him as his agent.

See the *Stafford case*, and report of the same to the House of Commons.

Evidence to show that the respondent employed agents whom he had at a former election charged

EVIDENCE. in his particulars with bribery is inadmissible.
Taunton, 2 O'M. & H. 70.

Notice to produce "all documents relating to the matter in question." In the *Westminster* case, where notice had been given to produce "all documents, books, and papers whatsoever and in any wise relating to the matters in question in this case," Martin, B., held "that the notice covered every document which *ought* to be filed, and *ought* to be delivered to the returning officer."

It was also held that the words did not apply to all papers relating to the matter without being further particularised—that the notice was too general.

It was also held that where one of a series of canvassing returns was used to refresh the memory of a witness, only that single return need be produced. *Westminster*, 1 O'M. & H. 93.

Telegrams. Before the transfer of the telegraphs to the Post-office, there was no doubt that telegraph clerks were bound to produce telegrams, no privilege attaching to them. *Coventry*, 1 O'M. & H. 104; *Bridgewater*, 1 O'M. & H. 114; *Dublin*, 1 O.M. & H. 271.

Quere whether court can order production of telegrams. Since the transfer of the telegraphs to the Post-office, it seems doubtful how far an Election Court would have power to compel the production of telegrams. See *The Telegraph Acts*, 1868, 1869 (31 & 32 Vict. c. 110, and 32 & 33 Vict. 73). By s. 23 of the latter act it is provided that—

"Nothing in this act contained shall have the effect of relieving any officer of the Post-office from any liability which would, but for the passing of this act, have attached to a telegraph company, or to any other company or person, to produce in any

court of law, when duly required to do so, any such written or printed message or communication.” EVIDENCE.

In the *Stroud case*, 2 O'M. & H. 110, Bramwell, B., in declining to order production of certain telegrams which the Post-office authorities declined to produce, expressed a grave doubt whether he had power to do so, the telegrams being in possession of the Crown. (See *Bolton*, 2 O'M. & H. 139.)

At all events, an order for the production of telegrams by the Post-office authorities will not be made unless on strong specific grounds being shown; see *Taunton*, 2 O'M. & H. 72, where the subject is discussed.

Bramwell, B., however (*Stroud*, 2 O'M. and H. 110) pointed out that it is always open to the Crown to raise no objection to the production of them; and the Post-office it seems will not as a rule object to produce original telegrams at the request of the sender or receiver, but will object to produce them at the request of a third party, unless the latter first produces the telegram received. *Bolton*, 2 O'M. & H. 139.

With respect to statements by voters and others as to matters connected with the election, the decisions following were made:— Hearsay evidence.

Where general intimidation is alleged, a witness may not state conversations with voters during the canvass, but may be asked generally whether he found any particular difficulty in getting promises in a particular district, and if so, whether he can attribute it to any cause. *North Durham*, 2 O'M. & H. 152. Evidence on general charges. General intimidation.

And general corruption may be inferred from the

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General corruption inferred from applications for drink.

Conversation between landlady and customers;

—between landlord and wife.

Conversation between voter's wife and alleged briber admissible.

Agent may be asked as to the sources of his information.

fact of a candidate during his canvass being continually applied to for drink. *Taunton*, 2 O'M. & H. 69. And it is no objection in such a case that the names of the persons are not in the particulars, it being practically impossible to give them.

In the *Bridgewater* case, M. was allowed to give in evidence the words which had passed between a landlady and people ordering beer, but not what she had said to him about it. *Bridgewater*, 1 O'M. & H. 114.

Again in the same case, where B. stated that when A., a publican, was drawing beer, his wife complained to him that he would not be paid, and he said, "Mr. V." (the sitting member)—and the answer was objected to: Blackburn, J., said, "So far as the conversation between husband and wife goes, showing they were giving credit to somebody, it is admissible; but it does not prove who had been ordering it." *Bridgewater. Minutes of Evidence*, 84.

A statement made by a voter to his wife that he has been bribed is admissible. *Bridgewater*, 1 O'M. & H. 113.

In the *Cashel* case, where a witness was objected to as giving evidence of a conversation between herself and Mrs. T. with respect to some money with which Mrs. T. wished to bribe the witness's husband, the examination was allowed to proceed on the witness stating she was the wife of a voter. *Cashel. Minutes of Evidence*, 69.

An agent may be asked in cross-examination the names of the persons from whom he obtained information as to intimidation in preparing his case, though the witness may withhold the nature of

the information given him confidentially by them. EVIDENCE.
Longford, 2 O'M. & H. 11.

But in the *Lichfield* case, Willes, J., ruled that a wife could not be cross-examined as to a conversation with her husband. *Lichfield*, 1 O'M. & H. 22. (k)

Wife cannot be cross-examined as to conversation with husband.

Where a new respondent has been under s. 38 of the Parl. El. Act, 1868 (see post App.), admitted to defend in place of the original one, admissions made by the latter are still admissible in evidence against the new respondent. (See *Tipperary*, 3 O'M. & H. 33.)

Admissions of original respondent evidence against substituted one.

So also evidence is admissible that an agent who has absconded since the election stated that he had bribed voters. *Stroud*, 2 O'M. & H. 107.

Statement by an agent who has absconded that he has bribed voters.

Statements made by an agent are admissible, even though agency be not yet proved. *Lichfield*, 1 O'M. & H. 23.

Statements made by an agent.

This, however, would seem to be qualified by the ruling of Blackburn, J., in the *Gloucester* case, 1873, who considered that the statement of the agent must be closely connected with some act—i.e., be *res-gestæ*, before evidence could be given of it.

And a similar ruling was given by Martin, B., *King's Lynn*, 1 O'M. & H. 207.

But the fact that an agent gave certain directions will be evidence. *Dover*, 1 O'M. & H. 210.

In the *Cashel* case, where objection was taken to a witness being asked about a conversation with a voter, Fitzgerald, B., ruled that, on a scrutiny, a statement of a voter to the effect that he was bribed might be inquired into. *Cashel. Minutes of Evidence*, 29. *Ipswich*, K. & O. 387.

Statement by a voter with reference to his being bribed.

For similar reasons a declaration by a person

Statements of voters on

(k) See Evidence Amendment Act, 1853, 16 & 17 Vict. c. 83.

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scrutiny as to personation.

But not admissible to invalidate election on ground of bribery, &c.

Declarations made by petitioner against character of his own witness.

Previous statements by adverse witness.

By own adverse witness.

that he has personated a voter is admissible evidence on a scrutiny to invalidate his vote. *Ipswich*, K. & O. 387; see also *Southampton*, P. & K. 222, and cases cited.

But such statements though invalidating the vote on a *scrutiny* would not be admissible with a view to unseating the candidate voted for, on the ground of bribery. *King's Lynn*, 1 O'M. & H. 208. *Windsor*, 1 O'M. & H. 5.

But in the *Londonderry case*, P. & K. 277, C. & R. 253, the respondents were allowed to give in evidence declarations made by the petitioner against the character of a person now called by him as his witness, and this without calling the petitioner himself.

In the *Cheltenham case* it was ruled, where a witness was shown a mark on a paper, and denied all knowledge of it, by Martin, B., "that all the provisions of s. 22 of the C. L. P. Act, 1854, must be strictly complied with—i.e., the circumstances connected with the making the mark must be recalled to his memory, and he must in the first instance be proved to be adverse." *Cheltenham*, 1 O'M. & H. 63.

The rules as to when a party's own witness may be cross-examined as being adverse are the same as at *nisi prius*. *Bradford*, 1 O'M. & H. 31.

In the *Galway case*, however, Keogh, J., allowed a witness who proved adverse to be asked as to former inconsistent statements in writing. 2 O'M. & H. 51.

In the *Gloucester case* (1873), Blackburn, J., ruled that when a party's own witnesses proved adverse, previous statements made by them could not be given in evidence to contradict their state-

ment on oath. See also *Bridgewater*, 1 O'M. & EVIDENCE.
H. 114.

A witness may not be asked for whom he has voted (Ballot Act, 1872, s. 12, post App.), either in examination-in-chief or cross-examination, nor it seems, to what party he belongs, *North Durham*, 3 O'M. & H. 1; but may be asked whether he holds himself out as belonging to a particular party (Ibid.).

Cross-examination of witness as to his party.

In the *Tamworth case*, it was ruled that the pass-book of the respondent's agent could not be called for unless it could be proved to be material to the inquiry; and it was further ruled that the respondent's pass-book could not be called for except under similar circumstances. *Tamworth*, 1 O'M. & H. 76.

Banker's pass-book of respondent or his agent;

In the *Salford case*, where a clerk from the bankers for the respondent's committee was asked to produce the account of the respondent's committee with the cheques, Martin, B., said, "The account is not evidence if the respondent object; you must examine witnesses as to it. The account is merely a means of refreshing the memory of the clerk; he must be taken through it item by item." *Salford*, 1 O'M. & H. 136.

—of respondent's committee.

In the *Northallerton case*, where the respondent was asked to produce his canvass-book, Willes, J., said, "Counsel might ask for any particular entry in the canvass-book." *Northallerton*, 1 O'M. & H. 169.

Canvass-book.

In the *Westminster case*, 1 O'M. & H. 93, canvassing-books were held not to be evidence, as nothing but documents possessed by the witness which might be used to examine him by, and the

EVIDENCE. examination would then be evidence, but not the books.

Agency terminated at close of election.

There seems no doubt that a candidate is not liable for any acts committed by his agent after the election is over, unless he be himself personally privy to them—*i.e.*, no corrupt act committed after the polling has terminated by an agent for the purposes of the election can bind the candidate. The point was twice argued at length during the trial of the election petitions, once in the *Bodmin case*, 1 O'M. & H. 118, and again in the *Salford case*, where Martin, B., said, "The agent that I would consider would affect the seat by his act after the election would be a person who did that act *with the privy of the member*. A person who merely was an agent in the sense that he had been an agent in the election, would not in my judgment affect the seat by any corrupt act of his done after the election without the privy of the member." *Salford*, 1 O'M. & H. 138. *Norfolk (N. Division)*, 1 O'M. & H. 243. *Longford*, 2 O'M. & H. 11, 12; see also *supra* p. 182.

Act after election may throw light on what happened before.

A corrupt act, however, done after the election may be material as throwing light on what took place before the election. *Southampton*, 1 O'M. & H. 222.

In the *Galway case*, where the petition contained a charge of general undue spiritual influence, evidence was allowed to be given as to a sermon preached during the hearing of the petition. 2 O'M. & H. 51.

Petitioner if attacked may be called to clear his character.

When the seat is not claimed, as the respondents cannot give recriminatory evidence, the petitioners cannot go into evidence exculpatory of

their party; but if any aspersion be made against any person on the petitioner's side he will be allowed in fairness to clear himself by giving any explanation he can. *Blackburn*, 1 O'M. & H. 199. EVIDENCE

And similarly, where before the conclusion of the petitioner's case the respondent abandons his seat, admitting corrupt practices by his agents, he may still be allowed to go into the box to deny his personal knowledge of any corrupt practice. *Norwich*, 3 O'M. & H. 16. *Stroud*, 2 O'M. & H. 112. *Bridgewater*, 1 O'M. & H. 115.

By Parl. El. Act, 31 & 32 Vict. c. 125, 1868, s. 32 (post App.), "on the trial of an election petition under this act the judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The judge may examine any witness so compelled to attend or any person in court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by a judge such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them." Judge may
summon and
examine
witnesses.

The powers given to a judge are, however, judicial, not inquisitorial, and therefore where, after the examination of certain witnesses, the respondent declined to contest the seat further, the judge did not consider himself bound to take further evidence with a view to his report. *Stroud*, 2 O'M. & H. 108, and compare *Windsor*, 1 O'M. & H. 6, and *Wakefield* 2 O'M. & H. 103. See also analo-

Duties of
judge judi-
cial not
inquisitori-

EVIDENCE.

Effect of
general
conduct of
election.

gous cases as to withdrawal of petition, post p. 217. But see also *North Durham*, 2 O'M. & H. 154.

The general conduct of the election will have an important bearing on the decision of any petition alleging corrupt practices where the evidence of specific acts is not very conclusive. See *per* Martin, B. *Westminster*, 1 O'M. & H. 95.

And on the other hand :—

“Looking at the mode in which this election appears to have been conducted generally, and the small expenditure incurred, I am induced to adopt the dictum of my brother Martin, and to say that where it is evident that it was intended that an election should be honestly conducted, and where the expenditure shows that the parties contemplated only that which was honest and legitimate, I should require very conclusive evidence to induce me to declare it void.” *Per* Mellor, J., *Barnstable*, 2 O'M. & H. 106.

A prevalence of many illegal practices which do not in themselves avoid the election will occasionally have that effect indirectly by putting an interpretation on an act otherwise ambiguous. See *per* Martin, B., *Wigan*, 1 O'M. & H. 192.

Contempt of
court.

In the *Boston case*, 2 O'M. & H. 166, a fine was inflicted for contempt of court in insulting a witness as he was leaving the court after giving his evidence.

Where, during the pendency of a petition articles were published in a newspaper calculated to interfere with the due course of justice and to

prejudice the petitioner, and embarrass the prosecution of the petition, it was held that this was a contempt of court, but that a judge on the rota sitting at chambers had no jurisdiction to commit. *Macartney v. Corry*, 7 Ir. R., C. L., 242.

EVIDENCE.

By the Parl. El. Act, 1868, s. 11, subs. 13, the judge determines whether the petitioner or respondent was duly elected, or whether the election was void, and certifies his decision to the speaker, and such certificate is final to all intents and purposes, and in addition to the *certificate* makes a *report* in writing to the speaker (s. 11, subs. 14); at the same time (subs. 15) he may make a special report as to any matters arising in the course of the trial.

CERTIFICATE
AND REPORT
OF JUDGES.

The trial now takes place before two judges, see 42 & 43 Vict., c. 75 post App.; by s. 2 of that act it provided that:—

“Every certificate and every report sent to the speaker in pursuance of the said Act shall be under the hands of both judges, and if the judges differ as to whether the member whose return or election is complained of was duly returned or elected they shall certify that difference, and the member shall be deemed to be duly elected or returned; and if the judges determine that such member was not duly elected or returned, but differ as to the rest of the determination, they shall certify that difference, and the election shall be deemed to be void; and if the judges differ as to the subject of a report

Certificate
and report
signed by
both judges.

**CERTIFICATE
AND REPORT
OF JUDGE.**

to the speaker, they shall certify that difference and make no report on the subject on which they so differ."

It is unusual for the counsel on either side to suggest to the judge at the trial the name of any person to be mentioned in the report. See the *Galway (County) case*, 2 O'M. & H. 53.

For form of such report, see the *Norwich case*. 3 O.M. & H. 17.

The question as to the finality of the certificate and report was thoroughly argued in the *Norwich case*, when it was decided that the certificate was final and conclusive under the words of the section, *contra*, however, as to the report, which did not estop an inquiry into charges relating to a previous election against any person not seated by the certificate. *Stevens v. Tillett*, 6 L. R., C. P. 147.

Report as to
bribery,
treating, or
undue in-
fluence at a
former
election.

Therefore it would seem that bribery, treating, and undue influence by a candidate or his agents at a former election, during the same Parliament, for the same place, can be inquired into on a petition against the return of that candidate on a subsequent vacancy, during the same Parliament, for the same place. See C. P. P. Act, 1854, s. 36.

"If any candidate, at any election for any county, city, or borough, shall be declared by any election committee guilty by himself or his agents of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough, for the Parliament then in existence."

The inquiry would take place in the following instances :—

CERTIFICATE
AND REPORT
OF JUDGE.

- (a.) When a candidate has been unsuccessful at a former election, and no petition has been presented against the return.
- (b.) When a petition has been presented after a former election, either by the defeated candidate or electors, without claiming the seat, and on a subsequent vacancy the same candidate stands again.
- (c.) When the seat has been claimed, and re-criminatory evidence actually gone into, and a report made by the judge, but the claim to the seat during the course of inquiry has been abandoned. *Stevens v. Tillett*, 6 L. R., C. P. 174. But not if the judge makes his *certificate* that the defeated candidate was duly elected, as that is a conclusive decision that he committed no corrupt act. (*Ibid.*, and see *Waygood v. James*, 4 L. R., C. P. 361, supra "Scrutiny"). And in *Stevens v. Tillett*, ubi supra. 174, Willis, J., said :—

"Upon the construction of the Act, we must arrive at the conclusion that if the judge is satisfied, there is an end of the matter; whilst, if the judge is not satisfied, and says simply "not proved," that is not an end of the matter as to cases not specifically brought before and adjudicated upon by him; because, consistently with its not being then proved, and with the principles of procedure, corruption may be subsequently proved in other

CERTIFICATE
AND REPORT
OF JUDGE.

cases by evidence subsequently discovered."

It is, however, highly improbable that evidence of bribery, treating, or undue influence at the former election would be admissible if these charges could have been ascertained and brought forward during the former petition. See judgments of Bovill, C. J., and Willes, J., in *Stevens v. Tillett*, 6 L. R., C. P. 147 : Willes, J., there said (p. 171).—

"If I were to try this petition I should feel the strongest reluctance to admit any matter which was within the knowledge of the respondent at the time of the first petition, or which he might reasonably have produced at the time of the first petition, and which he did not produce."

See also the evidence of Willes, J., before the Select Committee on Parliamentary and Municipal Elections, p. 447, where that learned judge said :—

"The law is clear, that during the same Parliament a person who has been as a candidate guilty of bribery at an election, cannot hold his seat against a petition, and that if he be returned, you may bring up against him anything he has done at any former election which could not have been brought up against him on some former petition."

Semble, that bribery, treating, or undue influence, committed on former occasions by a candidate through his agents, could not subsequently be brought up against him, except under the provisions of the C. P. P. Act, 1864, s. 36, as before quoted, and the judgment of Willes, J., in the

Norwich case. Although for personal bribery committed by a candidate he is specially disqualified from sitting for any place in any Parliament for seven years from the date of being found guilty by the Parl. El. Act, 1868, s. 43.

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AND REPORT
OF JUDGE.

With respect to *personation* at previous election, although a corrupt practice by the Ballot Act, 1872, s. 24, owing to the wording of that section, it would seem that the question of personation at a former election cannot be entered into on the trial of a petition relating to any subsequent election.

Personation
at a previous
election.

“If on the trial of any election petition questioning the election or return for any county or borough, any candidate is found by the report of the judge by himself or his agents to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at *such election* of the offence of personation by any person, such candidate shall be incapable of being elected or sitting in Parliament for such county or borough during the Parliament then in existence.”

The words “such election” would appear to exclude evidence concerning any election *except* the one then questioned: and see *per* Pigott, B., *Stroud*, 3 O’M. & H. 10.

As to the effect of the sections, see particularly the judgment of Willes, J., in *Stevens v. Tillett*, 6 L. R., C. P. 176.

By s. 12 of the Parl. El. Act, 1868, 31 & 32 Vict., c. 125, the judge has power to reserve any questions of law as to the admissibility of evidence

Reservation
of case.

**CERTIFICATE
AND REPORT
OF JUDGE.**

or otherwise for the consideration of the Court of Common Pleas, in which case he may postpone granting the certificate until their decision. *Youghal*, 1 O'M. & H. 298. He cannot reserve questions of fact (*Ibid*).

A point to be reserved must go to the whole result.

A point to be reserved must go to the whole result of the trial. *Taunton*, per Grove, J., 2 O'M. & H. 71.

In the *Bristol case*, 2 O'M. & H. 29, Bramwell, B., stated the case, the counsel on either side having permission to see it when stated. It was in the following form :—

Case.

Form of
case.

“ At the last Parliamentary election for the city of B., R. was returned. A petition against his return was duly presented, and tried before me on the 23d, and four following days, of May. I have thought it right to reserve, for the opinion of the Court of Common Pleas, a question which arises as follows.”

(*Here the point was stated.*)

“ The parties have agreed to my stating this case as a way of reserving the question ; but if necessary, I must further report to the court as the court may require.

“(Signed) G. B.”

23 L. T., Rep. N. S. 189 : *Britt v. Robinson*, 5 L. R., C. P. 503. For other forms of special case see appendix post.

On the case being decided by the Court of Common Pleas, a rule of court is drawn up

embodying the decision of the Court in the terms in which it has been pronounced.

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AND REPORT
OF JUDGE.

Where a judge reserves a case for the opinion of the Common Pleas Division, and the court is equally divided, the judge gives his own decision on the point and reports accordingly. *Drogheda*, 2 O'M. & H. 207.

Where court
divided on
case
reserved.

By the Parl. El. Act, 1868, s. 41—

“ All costs, charges, and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court or judge may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the court or a judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or not on the whole successful.

COSTS.

Costs are in
the discre-
tion of the
court.

The costs of the trial of election petitions are, therefore, wholly in the discretion of the court;

| | |
|---|---|
| COSTS. | it will be useful to consider shortly the principles on which this discretion is usually exercised. |
| Discretion over costs, how exercised. | As a general rule, costs will be directed to follow the event of a petition. |
| Costs follow event. | In the <i>Bridgewater case</i> , Blackburn, J., said— “I need hardly say that, in a case like this, where the petitioners have succeeded, the ordinary rule is that the petitioners have costs, and as there is no reason to depart from the ordinary rule, the petitioners must have costs.” <i>Bridgewater</i> , 1 O’M. & H. 116. |
| What is the event. | In the <i>Petersfield case</i> (2 O’M. & H. 99), where there was a claim (1) to unseat the respondent for corruption, and (2) a claim for the seat on a scrutiny, this was regarded as divisible into two cases for purposes of costs, and corruption not being made out, costs of that part of the case were ordered to be paid by the petitioner, without waiting for the result of the scrutiny. |
| Exceptions to rule that costs follow the event. | Frequent exceptions are, however, made in the application of the rule that costs follow the event, for various reasons. |
| Cases where unsuccessful petitioner not ordered to pay costs. | Thus judges have refused to order the petitioner, though unsuccessful, to pay costs, if there have been a reasonable ground for presenting the petition. * |

In the *Westminster case*, Martin, B., said—

“Although my impression is that costs should follow the event, I certainly should not in this case give the entire of them, for, in my judgment, this case has lasted too long. If, in our joint judgments, Mr. Justice Willes, Mr. Justice Blackburn,

and I consider that we ought to be governed in giving costs by the consideration as to whether there was reasonable and probable ground for the petition, I should be inclined not to give costs, for I think there was reasonable and probable ground—indeed I think there was strong ground—for it.”

Eventually it was decided that each party should pay their own costs. *Westminster*, 1 O.M. & H. 96.

In the *Coventry case*, Willes, J., said—

“The question which remains is that of costs.

As a rule, costs ought to follow the event, and in ordinary actions they almost invariably follow it, the exceptions being rare. I did intend to deal with these cases as if they were ordinary suits between party and party. I have, however, become deeply impressed with the feeling that there is a third party, no less interested than those who are immediately engaged in the petition, and that I ought in each case to consider, not merely whether the petition has failed or has succeeded, but whether upon the whole I think there are grounds, not founded merely upon the truthfulness of witnesses, but founded upon the very character and history of the transaction, upon which it was for the public benefit that the petition should be presented, and upon which I think that the petitioners have had reasonable and probable cause for insti-

COSTS.

COSTS.

tuting the enquiry. I shall say no more upon that point, unless it is desired that I should do so. I think this is a case in which a petition has been most reasonably presented and prosecuted; and, therefore, I say nothing about the costs, although the petition has in the end, in my mind, altogether failed of arriving at the result of unseating the members." *Coventry*, 1 O'M. & H. 111. See also *Norwich*, 1 O'M. & H. 12. *Tamworth*, 1 O'M. & H. 88.

Or where many acts of the respondent and his agents have been illegal, though not so far illegal as to avoid the election. *Londonderry*, 1 O'M. & H. 277 (employment of voters); *Bolton*, 2 O'M. & H. 150 (violation of secrecy); *Stroud*, 2 O'M. & H. 185.

Cases where successful party will not get costs.

And a successful party may be deprived of costs where he has himself acted improperly, either at the election itself or in the conduct of the case; *Wallingford*, 1 O'M. & H. 61 (time wasted owing to the case not being properly got up); *Hereford*, 1 O'M. & H. 197 (particulars too voluminous and misleading); *Bristol*, ante p. 173 (similar reasons); *Norwich*, 2 O'M. & H. 42 (similar reasons); *Longford*, 2 O'M. & H. 17 (many unfounded charges made); *Westbury*, 1 O'M. & H. 56 (many personal charges made, but not sustained); *Longford*, 2 O'M. & H. 17 (respondent's acts due to illegal acts of petitioner); *Poole*, 2 O'M. & H. 127 ("fishing" petition; petitioners men of straw).

Costs of part of case to be paid by

Or the court may order either party to pay a particular portion of the costs, as the costs caused

by his mode of conducting a part of the case : *e.g.*, costs of preparing for a scrutiny which was prayed but not persisted in (*Bewdley*, 1 O'M. & H. 21; *Westbury*, 1 O'M. & H. 56; *Norwich*, 1 O'M. & H. 12); unless the costs would have to have been substantially all incurred for the other part of the case (*Waterford*, 2 O'M. & H. 5); costs of certain specific charges unnecessarily made (*Stroud*, 3 O'M. & H. 12); or of evidence improperly obtained by a trick (*Kidderminster*, 2 O'M. & H. 178).

COSTS.

offending party.

The fact that the respondent loses his seat on petition because of treating by his agents unknown to him personally, will not of itself be sufficient reason to prevent his being ordered to pay the costs according to the usual rule. *St. Ives*, 3 O'M. & H. 14.

Innocence of unseated candidate does not alone prevent order against him for costs.

The 41st section of the Parl. El. Act, 1868, also gives power to a judge, when reserving a case for the opinion of the court, to order the costs to follow the judgment there given. *Boston*, 2 O'M. & H. 168; or he may reserve questions of costs to be dealt with by himself after the court has given its decision on the question reserved.

Costs reserved to follow result of special case.

And where the petitioners wrongly make an unsuccessful candidate a respondent, the court has power to order them to pay his costs, as they cannot raise the objection that he is not a party to the petition. *Lovering v. Dawson*, 10 L. R. C. P. 726.

Over what costs the court has jurisdiction. Where parties are wrongly joined.

Where an election has been declared void through the mistakes of the returning officer in the conduct of it, it seems doubtful whether the court has power to order him to pay the costs of the petition. See *Hackney*, 2 O'M. & H. 87.

Costs where the returning officer is a respondent.

COSTS.

Semble, however, that it has *Woodward v. Sarsons*, 10 L. R. C. P. 733; *Davies v Lord Kensington*, 9 L. R., C. P. 720; *Drogheda*, 2 O'M. & H. 211.

In no reported case, however, that has yet been decided has the returning officer been ordered to pay the costs of other parties.

Will have
his costs if
no mis-
conduct.

Where no misconduct is proved against a returning officer he will have his costs. *Warrington*, 1 O'M. & H. 44.

Returning
officer *bond
fide* mis-
interpreting
act.

Where a petition was caused by *bond fide* misinterpretation of the Ballot Act by the returning officer (without the interference of either side), and consequent wrongful rejection of votes by him, the court refused to order him to pay the costs, and ordered each side to pay its own costs. *Athlone*, 8 Ir. Rep. C. L. 240; 2 O'M. & H. 190; see also *Wigton*, 2 O'M. & H. 230; *Drogheda*, 2 O'M. & H. 211.

Or making
bond fide
mistake.

Where the petition has been caused by the mistakes of the presiding officer at one of the polling stations, but the result of the election has not been thereby affected, and there has been no personal default on the part of the returning officer, he will not generally be ordered to pay the costs of a petition. *Woodward v. Sarsons*, 10 L. R., C. P. 733; accord, *Davies v. Lord Kensington*, 9 L. R., C. P. 720.

Mistake of
returning
officer
caused by
respondent's
conduct.

But where the returning officer, at the instance of the respondent, wrongly rejected the nomination of the petitioner, the respondent was ordered to pay all the costs. *Mayo*, 2 O'M. & H. 195.

Costs of
municipal
petition.

In a municipal petition the costs are by 35 & 36 Vict. c. 60, s. 19, subs. 1, post App., in the discretion of the commissioner; this discretion is

absolute and cannot be interfered with by the Court of Common Pleas (*Lovering v Dawson*, No. (2), 10 L. R., C. P. 726); nor is it affected by s. 21 subs. 5.

costs.
Discretion of commissioner cannot be interfered with by the court.

By that subsection it is enacted that "the superior court shall, subject to the provisions of this Act have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as it would have if the petition were an ordinary cause within its jurisdiction."

The powers given by this subsection are thus subject to the limitation "subject to the provisions of this Act;" so that it would seem that the case would be unaffected by any alteration in the powers over costs given by the Judicature Act to the Court in the case of an ordinary cause: as to which see Judicature Act, Order 55.

The entry of the order as to costs by the registrar at a municipal petition is sufficient; such an order need not actually be indorsed on the petition by the commissioner. *Pare v. Hartshorn*, 23 W. R. 138.

Order how made.

The 41st section of the Parl. El. Act, 1868, 31 & 32 Vict. c. 125 (as to Parliamentary elections) and 35 & 36 Vic. c. 60, s. 19 (as to municipal elections) enact:—

Taxation costs.

The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed."

According to the practice of the Court of Chan-

COSTS.

cery, "costs between solicitor and client, payable by one party to another, will not include all costs to which the solicitor would be entitled as against his client." See "Morgan and Davey on Costs in Chancery," p. 1, quoted in *Hill v. Peel*, 5 L. R., C. P. 172, at p. 178; and in that case it was held that the parties entitled to costs are entitled to an indemnity for all costs that are reasonably incurred by them in the ordinary course of a matter of such a nature, but not to any extraordinary or unusual expenses incurred in consequence of over-caution or over-anxiety as to any particular case, or from considerations of any special importance arising from the rank, position, wealth, or character of either of the parties, or any special desire on his part to insure success; and that such extraordinary costs as an attorney would not be justified in incurring, without distinct and special instructions from his client, are not to be allowed.

Thus, where the master disallowed the costs of an unsuccessful application at chambers, and to the Court by way of appeal, to increase the amount of the recognizances under s. 6, subs. 5, of 31 & 32 Vict. c. 125, the Court held his decision right, on the ground that this was merely a collateral matter. *Hill v. Peel*, ubi supra.

Discretion of
master.

The Court is unwilling to interfere with the master's taxation unless he is shown to have acted on a wrong principle; and where the master has arrived at a decision upon a matter within his discretion, and in which no principle is involved, it lies upon those who impeach his decision to satisfy the Court that he is wrong, and they must produce

very strong grounds to induce the Court to interfere. See the *Tamworth case*, L. R. 5, C. P. 185 *Hargreaves v. Scott*, 4 C. P., D. 21.

COSTS.

Lump sum.

In all cases the master is bound to go into the several items composing the bill of costs, and must not merely allow a lump sum. *Hill v. Peel*, and *Tillet v. Stracey*, ubi supra; *Hughes v. Meyrick* 5 L. R., C. P. 407.

The master may, however, allow a lump sum for instructions for brief, provided the items are brought before him, and he exercise his discretion in determining upon them. *Barnstaple; Fleming v. Cave*, 44 L. J., C. P. 200.

In the *Norwich case* (5 L. R., C. P. 185), on the taxation of the costs of a petition, the number of witnesses to be allowed, the length of the briefs and proofs, the number of counsel, and the amount of their fees and the incidental expenses of the trial, are matters for the master's discretion, subject to the control of the Court, where a proper case is shown for its interference.

Thus, where a large number of witnesses had been subpoenaed to prove bribery, but it became unnecessary to call them, a strong case having already been made out, the master disallowed the costs of all except those whose proofs showed that they had bribed or been bribed, or had given information on which it was proposed to cross-examine a hostile witness; and this although fifty of such witnesses had afterwards admitted bribery when examined before a Royal Commission. The Court, however, refused to interfere (*Ibid.*); (see, however, *Trench v. Nolan (Galway)*, 7 Ir. R., C. L. 445; 21

COSTS.

W. R. 640; where many of the allowances made by the master were increased (1).

The master, on taxation of the petitioners' costs, disallowed fees for consultation during the trial. The Court, in accordance with the *Tamworth case*, directed him to review his taxation in that respect.

The master disallowed a moiety of the charges paid to the undersheriff on the trial. The Court declined to interfere.

In the taxation of costs regard will be had to the reasonableness of the time at which expenses were incurred. Thus, where a petition is withdrawn before trial, the respondent will not be entitled to charge the petitioner with all the expenses which he has incurred, but only with such as it was reasonable to have incurred at that time, having regard to the time fixed for the trial of the petition. As to what expenses are reasonably incurred at any particular time, it was decided in the *Pembroke case*, *Hughes v. Meyrick*, 5 L. R., C. P. 407, that there is no fixed rule, but all the circumstances of the particular case are to be taken in account: the time fixed for the delivery of particulars of bribery, &c., is not to be treated as analogous to the notice of trial in an ordinary action. Thus, where, on taxation in a case where

(1) Allowances made in respect of the following:—General retainers (10 guineas) to leading counsel; case to advise on proofs (20 guineas); taking short-hand notes and supplying them to counsel, and solicitor's charges of obtaining them; witnesses *bonâ fide* summoned though not called, and this without the registrar's certificate; illustrated map of the country; two counsel on the hearing of a case reserved; costs of proceeding to draw money out of Court.

a petition was withdrawn before trial, the master disallowed the expenses of the subpoenas and the fees paid to counsel, and he also substantially disallowed the costs of drawing and copying the briefs, and all the expenses of preliminary inquiries, conceiving that, by analogy to the rule which precludes the allowance of costs of preparing for trial before notice of trial given in an ordinary action, these expenses had been prematurely incurred, the Court ordered a review of the taxation.

COSTS.

In that case, Bovill, C. J., said :—

“The election judges, in framing the rules under the Act, considered that three days before the hearing of the petition would, under all the circumstances attending these cases, be a right and reasonable time for the delivery of particulars. But it was not intended to intimate that the attorney or agent of the respondent was to do nothing before that period towards preparing to defend his seat. That would in all cases be inconvenient, and in many it would amount to a denial of justice. In practice, the respondent always has some general knowledge of the sort of case which it is proposed to make against him. And there are many matters which must of necessity be inquired into at an earlier stage than the delivery of particulars, such as the conduct of the agents employed on his behalf at the election, and a variety of other matters. Upon these the master must in each case exercise his discretion as to whether or not

COSTS.

the expenses are reasonably incurred by the attorney on behalf of his client, consistently with the rules we have laid down."

The master afterwards made allowances in respect of the whole of the items.

In the three cases following, the master, on taxation, allowed on the brief a fee of 100 guineas to the leading counsel (with an additional allowance of 25 guineas in the *Penrhyn case*, on account of the great distance from London), and 75 guineas to the junior; and refreshers of 25 guineas a day to the leader, and 15 guineas a day to the junior; but he allowed no fees (except one) for "consultations." As to the *Tamworth* and *Penrhyn cases*, the master appearing to have treated them as cases of an ordinary description, the Court thought there was no ground upon which they could properly interfere with or review his decision, either in point of principle or as a matter of discretion or amount, so far as regarded the fees and refreshers; but, as to the consultations, they thought the master had assimilated these cases rather too closely to the practice in ordinary actions at law, in which only one consultation is usually allowed, and that it was reasonable and proper that consultations should be held from time to time as different points of the case were developed, and that the fees should be allowed according to the usual mode of charge in ordinary suits, and in addition to the refreshers for each day's attendance upon the inquiry.

As to the *Southampton case*, however, the majority of the court thought it stood upon a somewhat

different footing; and, looking to the nature of the inquiry and the voluminous briefs in that particular case (which were produced in court), that it would be more satisfactory that the master should reconsider the question of fees as well as consultations.

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In the *Tamworth* and *Penrhyn* cases, the master disallowed all the items for "preliminary expenses," or costs of inquiry, and journeys consequent thereon, after the presentation of the petition and before the hearing, and allowed 100 guineas in the former and 150 guineas in the latter as "instructions for brief." As to these, the court saw no reason to doubt that the master had exercised a right judgment, and declined to send the matter back to him.

But in the *Southampton* case, where the costs charged as "preliminary expenses" amounted to nearly £1000, and the master had allowed only £105, looking to the affidavits, and the absence of any answer to them, to the particulars, and the number of votes objected to, the length of the briefs allowed by the master, the number of witnesses, and the other circumstances of the case :

The majority of the court (Willes, J., dissenting) thought the decision of the master should be reconsidered by him.

The result was that the rules were made absolute in all the cases as to the consultations, and in the *Southampton* case as to the counsel's fees and preliminary expenses also.

Rules absolute, with costs. *Tamworth*, *Penrhyn*, *Southampton*. 5 L. R., C. P. 172. Compare also,

COSTS. *Hargreaves v. Scott*, 4 C. P. D. 21, the case of a municipal petition.

For precedents of bills of costs, see "Scott on costs" 4th Ed.

Order how enforced.

To obtain costs of a municipal petition ordered by a commissioner, and to proceed to enforce the order under rule 55, see post App., the order of the commissioner should first be made a rule of court. *Pare v. Hartshorn*, 23 W. R., 138.

Application for payment of deposit.

The additional rules prescribe the mode of proceeding for obtaining repayment of the deposit, see post App.

The application may be made to any judge at chambers after a notice to the opposite party, upon proper affidavits stating such notice and showing that all claims have been discharged, and also who is the party entitled to receive the amount, and if the judge is satisfied he will make an order, which in practice is required to be signed by the judge personally.

The order should be drawn up on reading the affidavits, which must be filed, and it should direct payment to the party who is entitled to receive the money by name.

This order cannot be made by consent on account of the claims of witnesses. When the order is obtained it is to be taken to the principal clerk of the Lord Chief Justice of the Common Pleas, who will then obtain the draft of the Chief Justice upon the back of the original order for the payment of the amount by the Bank of England. See also *Bodmin*, W. N., Feb. 5, 1870.

On a dissolution before the

Where Parliament is dissolved before the trial of an election petition, the petition thereby abating,

the petitioner is entitled to have the deposit paid out to him. *Carter v. Mills*, 9 L. R., C. P. 117. He is not, however, so entitled if the dissolution take place after the trial, and after an order as to costs has been made, although the certificate of the judge may not have actually reached the Speaker at the time of the dissolution. *Marshall v. James*, 9 L. R., C. P. 702.

COSTS.

trial of the
petition.

The withdrawal and abatement of election petitions are regulated in the case of Parliamentary petitions by the Parl. El. Act, 1868, ss. 35-38, post App. ; 42 & 43 Vict. c. 75, s. 2; and General Rules, XLV.—LIV., post App. ; and in the case of municipal petitions by the Cor. Pr. Municipal El. Act, 1872, ss. 17 & 18, and the General Rules, XLV.—LIV., post App.

WITH-
DRAWAL AND
ABATEMENT
OF PETITION.WITH-
DRAWAL.

An application to withdraw a Parliamentary petition must now be made to two judges. See 42 & 43 Vict. c. 75, post App.

Application
is to two
judges.

The application for withdrawal should be accompanied by affidavits of the petitioner and defendant to the effect that it is not the result of any corrupt arrangement. (See Form, App., post.) See *Brecon*, 2 O'M & H. 33; *Hartlepool*, 19 L. T. N. S. 821.

In the *Brecon* case the judge had the maker of the affidavit sworn in order that he might, if desired, be cross-examined. 2 O'M. & H. 33.

In the *Stockport* case, 19 L. T., Rep. N. S. 743, on affidavits of this description being lodged, the judge held he was bound to allow the withdrawal; and although electors had memorialised against the withdrawal, their memorial must be disregarded

WITH-
DRAWAL.

if they did not appear to support it, and in the *St. Ives case*, 3 O'M. & H. 13, where the respondent, after a certain amount of evidence had been given, admitted that his election must be declared void at Common Law, Lush, J., said that after such an admission he did not think it any part of his duty to insist on the inquiry going any further. See also *Westbury*, 1 O'M. & H. 48, and cases quoted supra pp. 195, 196.

But a contrary opinion was expressed by Grove, J., in the *North Durham cases*, 3 O'M. & H. 2, 5.

"The withdrawal of an election petition must be by leave of the judge, and if the judge saw that the withdrawal was the result of any compromise to prevent evidence from being brought forward, he ought not to allow a petition to be withdrawn, but he ought, as far as he has power to do so, to insist upon the petition being proceeded with."

Though the judge at the same time spoke of the practical difficulty, if not impossibility, of compelling the parties to go on, though he may exercise the power of preventing the withdrawal of the deposit. *Ibid.*

And in view of this practical difficulty, Lush, J., in the *Norwich case*, 3 O'M. & H. 16, while expressing his inability to compel further witnesses to be examined, announced his intention of reporting to the Speaker of the House of Commons his suspicions as to the existence of corruption much more widely spread than that which had been so far proved. See Report in that case, 3 O'M. & H. 17.

The statutory notice of withdrawal must in all cases be given ; and if a petition be withdrawn at the trial, there must be an adjournment in order that it may be given. *Hartlepool*, 19 L. T., Rep., N. S. 821, and where notice to withdraw was given less than five days before the day fixed for the trial, the judge considered that an arrangement to withdraw could not be made except in open Court, and consequently opened the trial at the time and place fixed. *Brecon*, 2 O'M. & H. 33.

WITH-
DRAWAL.

Due notice
must be
given.

It seems that the practice as to the withdrawal of a petition applies to the withdrawal (at all events after the expiration of the twenty-one days limited for presenting petitions) of so much of the prayer of a petition as claims the seat. *Aldridge v. Hurst*, 1 C. P. D. 410, 415, per *Grove, J.*, and see ante p. 166.

Withdrawal
of part of a
petition.

A petition will not abate by reason of the death of the respondent after its presentation. *Tipperary*, 3 O'M. & H. 19.

ABATEMENT.

A petition may be presented against the return of an elected member after his death, if within the prescribed twenty-one days. *Ibid.* (Where the authorities on the subject are discussed at length).

Petition
after death
of elected
member.

And in such a case a person may (under s. 38 of Parl. El. Act, 1868) be admitted as a respondent to oppose the petition. *Ibid.*

Substitution
of respon-
dent in
such a case.

As to the admissibility in evidence against the new respondent of admissions made by the original respondent. See *Tipperary*, 3 O'M. & H. 33, supra p. 191.

A petition will abate if a dissolution of Parliament occurs before it is tried. *Carter v. Mills*, 9 L. R., C. P. 117.

Abatement
by dissolu-
tion of Par-
liament.

ABATEMENT.

Effect of, on costs .

But this will not affect the right of a successful party to have his costs taxed pursuant to the judge's order on the trial of a petition, where the decision and order for costs has been given before the dissolution, though the judge's certificate did not reach the Speaker till after the dissolution. *Marshall v. James*, 9 L. R., C. P. 702.

ELECTION ACCOUNTS.

Omission to send in accounts of election expenses

It is most important that no money should be paid by the candidate except through his named election agent for money purposes—this is expressly made illegal (*m*) by 26 & 27 Vict. c. 29, s. 2. See Penalties, pp. 90, 91.

By 26 & 27 Vict. c. 29, s. 4, see p. 91, the election agent is bound within two months after the election to send in to the returning officer a detailed statement of all the election expenses incurred by any candidate, with the bills and vouchers relative to it, and a list of all persons who have been employed in any paid capacity by the candidate. Where the statement purporting to be sent in in

(*m*) The following important remarks were made by Martin, B., with respect to illegal payments, before the Select Committee on Parl. & Mun. El. 431 :—"I discussed the matter this morning with Mr. Justice Willes, and I attach much greater importance to and confidence in his opinion than in my own. He is of opinion, as he stated to me to-day, that he thought *that to whatever extent* the provisions of an act of Parliament were wilfully violated, which did not enact the consequences of those acts avoided the seat, a person sitting judicially could not avoid the seat."

However, the same learned judge stated subsequently that, if necessary, he would have sent a case for the judgment of the Court of Common Pleas, whether in analogy to general corruption, avoiding an election, they would hold that wilful violations of the provisions of acts of Parliaments which, of themselves, did not enact that the seat should be lost, nevertheless was such illegal conduct as, like general corruption, would avoid the seat.

pursuance of this section consisted merely of heads of expenses, amounting in all to £7,211 16s. 7d., some of the items amounting to nearly £2,000, and was unaccompanied by a single voucher, Martin, B., considered that this alone would have raised a *prima facie* case against the respondent, and that he might be called on to prove the legality of every item. *Bradford*, 1 O'M. & H. 32.

If there be any doubt as to the necessity of including certain expenses in the return it is much safer to include them. See, *e.g.*, the case of registration expenses in the *Penhryn case*, 1 O'M. & H. 131.

In the *Stafford case*, no vouchers or detailed statement having been returned for two large sums in the election accounts, Blackburn, J., allowed the petitioners to have an inspection of all orders and vouchers in the possession of the respondents which had not been returned, and to take copies thereof.

By 26 & 27 Vic. c. 29, s. 3, all bills, charges, or claims must be sent in within one month to the authorised agent, or all right to recover is barred.

A failure to comply with these conditions acts most prejudicially to the candidate on the trial of a petition, and may even under certain circumstances be *prima facie* ground for a petition. See *Bradford*, 1 O'M. & H. 32 (*supra*).

If any money has been given by a candidate with reference to registration expenses, it had better be included in the accounts.

Great care should be taken by the candidate not to send a sum of money to his agent exceeding the

**REBUTION
ACCOUNTS.**

sum named in the returned accounts. Should it happen that he does so, the balance ought to be duly accounted for by such agent.

As to the expenses of returning officers, see 38 & 39 Vict. c. 84, post App.

CHAPTER VII.

PERSONS DISQUALIFIED TO BE ELECTED OR TO SIT AND VOTE IN PARLIAMENT.

ALIENS—unless naturalised under 33 & 34 Vict., c. 14. See the *Tipperary case*, 2 O'M. & H. 36 & seq. *Drinkwater v. Deakin*, L. R. 9, C. P. 626, *per* Lord Coleridge, C. J.

By 33 & 34 Vict. c. 14, an alien to whom a certificate of naturalization is granted by the Secretary of State becomes entitled to all political and other rights, powers, and privileges, and is subject to all the obligations of a British subject. See also 33 & 34 Vict. c. 102; 35 & 36 Vict. c. 39; "May's Parl. Prac," 7th Ed. 31.

BANKRUPTS: By 52 Geo. 3, c. 144, s. 1, and the Bankruptcy Act, 1869, s. 122, if a member of the House of Commons is adjudged bankrupt, he shall be for one year, from the date of the order of adjudication, incapable of sitting and voting, unless within that time the order is annulled or the creditors are fully paid or satisfied.

At the expiration of that time the Court is required to certify the bankruptcy to the Speaker, when the seat of the member is vacant, and a new writ is issued.

It should be noticed that the words of the section do not disqualify a bankrupt

BANKRUPTCY—*continued.*

from standing, although by the Irish Act, 19 & 20 Geo. 3, c. 25, s. 9, it is enacted that *any person*, against whom a commission of bankruptcy shall issue, shall *be rendered incapable of being elec:ed, &c.,* and it would seem that the effect of that section, coupled with the Act of Union, 41 Geo. 3, c. 52, would prevent a person disqualified under the *Irish* Act from being elected or sitting for an *Irish* constituency. But (notwithstanding an opposite opinion is entertained in 'Rogers on Elections,' 12th ed. p. 258, 259), there does not seem anything in the Act of Union, 41 Geo. 3, c. 52, to disqualify a bankrupt being elected for an English constituency.

It should also be noticed that the wording of the section of 52 Geo. 3, c. 144, s. 1, and the Bankruptcy Act, 1869, s. 122, differ as follows: In the former the words are, 'The creditors . . . shall be *paid or satisfied to the full amount* of their debts,' in the latter the words are, 'the creditors shall be *fully paid or satisfied.*' The wording of the latter would seem to suggest that if the creditors were 'satisfied,' which they might be by accepting unanimously a composition as payment in full, a member might still keep his seat at the expiration of the year.

In support of this view it may be remembered that Lord Hatherley, C. (in *Ld. De M.'s* case) moved that Lord ——— should

BANKRUPTCY—*continued.*

take his seat, the creditors being satisfied—though nothing appeared to shew that they had been paid in full; see 34 & 35 Vict. c. 50, s. 4. (The Bankruptcy Disqualification Act, 1871.) See also 'May's Parl. Prac.' 7th ed. p. 35.

It appears that a liquidation by arrangement is distinct from an adjudication of bankruptcy—Ex parte Pooley, 7 Ch. App. 519.

It does not appear there is any incapacity from a Scotch sequestration.

A peer incapacitated from sitting in the House of Lords under 34 & 35 Vict. c. 50, cannot be a member of the House of Commons.

CLERGYMEN: Any person ordained priest or deacon, also any minister of the church of Scotland. But now by 33 & 34 Vict. c. 91 (the Clerical Disabilities Act, 1870) any minister of the church of England may execute a deed of relinquishment which frees him from his disabilities. See Penalties.

Also Roman Catholic Clergy: 10 Geo. 4, c. 7, s. 9.

CONTRACTORS (a). See Penalties.

(a) In the event of a person being a member of a firm accepting contracts from a government department, desiring to be a candidate, he might probably be protected from disqualification and from penalties by arranging that his partners, with the consent of government, should enter into each separate government contract alone, and receive all profits arising therefrom.

In order to carry out this, a new deed of partnership

CORRUPT PRACTICES—persons guilty of. See Penalties.

FELONS: See Case of O'Donovan Rossa (Practical Suggestions, *supra* p. 155), and that of John Mitchel in the *Tipperary case*, 3 O'M. & H. 35 & seq.

This disability attaches to all felonies:—
 “This disqualification by reason of conviction of felony attaches to every felon, even although there was no attainder. The law on that point was clearly laid down in the case of *R. v. Gray*, and was followed by that great judge, Chief Justice Blackburne, in the case of *Grace v. The Bishop of Ossory*, in which he lays down that there is no foundation for the distinction attempted to be raised between disqualification from felonies capital and felonies not capital. If a person is convicted of felony he becomes incapable of having civil rights, and of taking his seat in the House of Commons. That disability there are certain ways of getting rid of, and the Act of 9 George 4, c. 54, s. 33, is a clear legislative declaration that in no other way can the disability be got rid of except by a pardon from the Crown or enduring the sentence.” (*Ibid.*, pp. 43, 44,) *per* Lawson, J.

should be executed, by which the candidate should derive no profit and incur no loss from those contracts, and the receipts should be paid into a separate account, and the partnership should allow a reasonable sum for the use of the plant, &c.

This arrangement would in all probability be sufficient; at the same time a member elected under those circumstances might be subjected to great anxiety by any person who might choose to sue him for penalties.

GOVERNORS OF COLONIES : By 10 Geo. 4, c. 62, s. 1, governors appointed to posts under the East India Company were incapacitated from sitting and voting in the House of Commons, and were (sect. 2) subject to a penalty of 500*l.* if they did so. As, however, the East India Company has now ceased to exist (21 & 22 Vict. c. 106), *semble*, governors appointed to places contained in that Act would now come under the provisions of 6 Anne, c. 7, ss. 25, 29.

IMBECILES.

INFANTS.

JUDICIAL OFFICERS.

MEMBERS—already returned for one place are ineligible for any other until the seat is vacated—therefore a member often accepts the Chiltern Hundreds (which cannot be accepted during the recess, 21 & 22 Vict. c. 110, s. 4) for that reason. Persons are, however, frequently returned for two places during a general election, and then afterwards elect which constituency they will represent. A member who has given the prescribed notice under the Parl. El. Act, 1868, s. 39, that he does not intend to oppose a petition, shall not sit or vote in the House of Commons until the House of Commons has been informed of the report on the petition.

MISDEMEANANTS—if fraudulent.

- OFFICES: (1.) Persons having new offices or places of profit *under* (b) the crown created *since* (c) October 25th, A.D. 1705 (d).
- (2.) As to the holders of certain offices or places of profit expressly disqualified, see 'Rogers on Elections.'
- (3.) Persons having offices or places of profit by the nomination of the Lord Lieutenant of Ireland created since 33 Geo. 3, c. 41 (Irish).

PEERS—except Irish peers not elected of the twenty-eight representative peers.

PENSIONERS from the crown during pleasure or for years. 1 Geo. 1, St. 2, c. 56. But see 32 & 33 Vict. c. 15, by which persons with Civil Service pensions or super-

(b) Persons accepting offices or places of profit *from* the crown created *before* A.D. 1705 must vacate their seats, but are capable of being re-elected. See 6 Anne c. 7 (Appendix). By the Rep. Peop. Act, 1867, s. 52, members holding offices or places of profit from the crown, as in Schedule II. to that Act described, are not required to vacate their seats by the subsequent acceptance from the crown of any other office or offices in lieu of and in immediate succession the one to the other.

For the exceptions by special acts in favour of persons holding certain offices or places of profit, see 'Rogers on Elections,' 12th ed. 246, 247.

But persons accepting offices or places of profit created *before* A.D. 1705 *under* the crown, as distinguished *from* the crown, do not vacate their seats.

(c) For offices and places of profit expressly exempted from the operation of the act disqualifying their holders from sitting in parliament, see 'Rogers on Elections,' 12th ed. 246, 247.

(d) Formerly the Master of the Rolls in England might sit in parliament. 'May's Parl. Prac.' 7th ed. 33. Since the passing of 38 & 39 Vict. c. 77 (Judicature Act, 1875), he is disqualified, see s. 5.

PENSIONERS—*continued.*

annuation allowances are allowed to sit in Parliament : and 22 & 23 Vict. c. 15 as to persons holding diplomatic pensions.

RECORDERS for their own boroughs.

RETURNING OFFICERS for their own boroughs.

SHERIFFS for their own shires.

SCOTCH SHERIFF SUBSTITUTES : Sheriff clerks and deputy sheriff clerks for the shires for which they are appointed.

SCOTCH TOWN CLERKS and deputy town clerks for the places or districts for which they are appointed.

WOMEN.

CHAPTER VIII.

MUNICIPAL ELECTIONS.

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It is proposed in this chapter to deal with the main points in which the law and practice applicable to Municipal Elections differ from that applicable to Parliamentary Elections.

The constitution of Municipal corporations and the election of the members of them are regulated by the State. 5 & 6 Will. 4, c. 76 (Municipal Corporations Act, 1835) Ballot Act (35 & 36 Vict. c. 33, see post App., 38 & 39 Vic. c. 40., and the acts amending them.

By 5 & 6 Will. 4, c. 76, s. 25, the council of a borough consists of the Mayor, Alderman, and Councillors. (a)

By 5 & 6 Will. 4, c. 76, s. 28, it is enacted:—

“That no person being in holy orders, or being the regular minister of any dissenting congregation, shall be qualified to be elected or to be a councillor of any such borough or an alderman of any such borough, nor shall any person be qualified to be elected or to be a councillor or an alderman of any such borough who shall not be entitled to be on the burgess list of such borough, nor unless he shall be seised or possessed of real or personal estate or both to the following amount; that is to say, in all boroughs directed by this Act to be divided into four or more wards to the amount of one

DISQUALIFICATION FOR OFFICE.

Who not qualified to be chosen mayor or councillor.

(a) See 5 & 6 Will. 4, c. 76, ss. 27, 49, and 7 Will. 4, and 1 Vic. 78, s. 14. As the Mayor and Aldermen are elected by the members of the Corporation, questions relating to their election have been omitted as not falling within the scope of this work.

**DISQUALIFI-
CATION FOR
OFFICE.**

thousand pounds, or be rated to the relief of the poor of such borough upon the annual value of not less than thirty pounds, and in all boroughs directed to be divided into less than four wards, or which shall not be divided into wards, to the amount of five hundred pounds, or be rated to the relief of the poor in such borough upon the annual value of not less than fifteen pounds, or during such time as he shall hold any office or place of profit, other than that of mayor, in the gift or disposal of the council of such borough, or during such time as he shall have directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or, on behalf of such council; provided that no person shall be disqualified from being a councillor or alderman of any borough as aforesaid by reason of his being a proprietor or shareholder of any company, which shall contract with the council of such borough, for lighting or supplying with water or insuring against fire any part of such borough."

Holy orders. The disqualification of holy orders may now be got rid of by the means provided by 33 & 34 Vic., c. 91, allowing clergy to resign their orders.

Dissenting minister. The disqualification of "the regular minister of a dissenting congregation" does not apply to the case of a person who occasionally preaches, or preaches regularly during a temporary vacancy. *Reg v. Oldham*, L. R. 4, Q. B. 290.

The above section also disqualifies for election persons "not entitled to be on the burgess list ; so that before 38 & 39 Vict., c. 40, if a person were qualified to be on the burgess list though his name were not, in fact, upon it, he might be elected. *Whalley v. Bramwell*, 15 Q. B. 775 ; 20 L. J. Q. B. 53 ; and this although his name had been actually (though wrongly) struck out of the burgess list, so that it did not appear on the burgess roll.

DISQUALIFICATION FOR OFFICE.

Not entitled to be on the burgess list.

On the other hand, if a person were in fact on the burgess roll no disqualification attached on the ground that he was not qualified to be placed there. *Ex parte Hindmarch*, 3 L. R., Q. B. 12. *Budge v. Andrews*, 3 C. P. D. 510. Compare also *R. v. Dixon*, 15 Q. B. 33.

Now, however, by 38 & 39 Vict., c. 40. s. 1, subs. (2), every person nominated must be enrolled on the burgess roll of the borough, or a person whose name is inserted in the separate list at the end of the burgess roll, as provided by 32 & 33 Vict., c. 55, s. 3, and shall be otherwise qualified to be elected. And the effect of the two statutes read together has now been decided to be that the candidate must be both entitled to be on the list and also actually on the list. *Middleton v. Simpson*, L. J., Notes, March 6, 1880, p. 25.

Alterations by 38 & 39 Vict. c. 40. Burgess roll not conclusive of qualification.

The words "annual value" refer to the actual rateable value. *Baker v. Marsh*, 4 E. & B. 144.

Property qualification.

The above section, it will be noticed, also disqualifies all holders of "any office or place of profit other than that of mayor in the gift or disposal of the council ;" thus by s. 58 the town clerk and treasurer are disqualified ; by s. 119 the registrar

Office or place of profit.

DISQUALIFICATION FOR OFFICE.

Sheriff not disqualified.

Mayor not disqualified.

Disqualification of recorder.

Disqualification by interest in contracts.

Contracts, what.

5 & 6 Vict. c. 104.

of a borough Court of Record, and the other officers and servants of the court.

The sheriff is not now disqualified. See 5 & 6 Vict., c. 104, s. 8.

The mayor in a borough not divided into wards is not disqualified from becoming a candidate at an election; but he cannot act as returning officer at such election, and a substitute should be appointed under 5 & 6 Will. 4, c. 76, s. 36, (see p. 241), to act as returning officer instead of him. *Reg v. White*, L. R. 2, Q. B. 557.

A recorder of a borough is ineligible for the office of councillor. 5 & 6 Will. 4, c. 76, s. 103.

The disqualification of any person having an interest in a contract with the council of a borough only attaches while the contract continues. So that by being interested in such a contract a councillor does not so "cease to be qualified" or "become disqualified" within the meaning of s. 53, (see Penalties), as to be liable for penalties for acting as councillor after the contract has terminated. *Lewis v. Carr*, 1 Ex. D. 484. The prohibition is really one against acting during the continuance of the contract.—*Ibid.*, p. 491, *per* Bramwell, B.

The section apparently applies to continuing contracts not to mere sales of goods over the counter, or even sales for ready money.—(*Ibid.*).

The word contract (by 5 & 6 Vict., c. 104, s. 1) does not now (as used 5 & 6 Will. 4, c. 76, s. 28) extend to any lease, sale, or purchase of lands, tenements, or hereditaments or any agreement for any such lease, sale, or purchase, or for the loan of money or any security for the payment of money only. As to the meaning of the words "security

for money only," see *Le Feuvre v. Lankester*, 3 E. & B. 530. Similar provisions are applied to contracts for supplying workhouses, turnpike trusts, &c. See the analogous cases decided under these provisions cited in Rawlinson's Municipal Corporations Acts (5th Edition) p. 58.

DISQUALIFICATION FOR OFFICE.

The contract will act as a disqualification, even though by reason of its not being under seal the contractor could not have enforced it against the corporation. *R. v. Francis*, 21, L. J., Q. B. 304.

Contract need not be enforceable.

As to how far the disqualification can be got rid of by assignment of the interest under the contract before the election, see *R. v. Franklin*, 6 Ir. R. C. L. 239. *Quære*, however, whether this would not now be affected by the provisions of the Judicature Act 1873, s. 25, subs. 6. *Brice v. Bannister*, 3 Q.B. D. 569. *Buck v. Robson*, 3 Q.B. D., 686.

Assignment of interest in contract before election.

By 15 & 16 Vict. c. 5, s. 6, newspaper proprietors are not to be disqualified by reason of advertisements inserted in their papers by the town council.

Newspaper proprietors not disqualified by advertisements, &c.

By 32 & 33 Vict. c. 55, s. 5, proprietors of shares in railway companies or companies incorporated by Act of Parliament, or Royal Charter, or under the Companies Act 1862 are not thereby to be disqualified as contractors.

Proprietors of shares in public companies.

Section 52 of 5 & 6 Will. 4, c. 76 is as follows :—

Disqualification by bankruptcy, &c.

“ Provided always, and be it enacted, that if any person holding the office of mayor, alderman, or councillor for any borough shall be declared bankrupt, or shall apply to take the benefit of any act for the relief of insolvent debtors, or shall compound by deed with his creditors, or, being mayor,

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CATION FOR
OFFICE.**

shall be absent for more than two calendar months, or, being an alderman or councillor, for more than six months, at one and the same time (unless in case of illness), from the borough of which he shall be mayor, alderman, or councillor, then and in every such case, such person shall thereupon immediately become disqualified, and shall cease to hold the office of such mayor, alderman, or councillor, as aforesaid, and in the case of such absence shall be liable to the same fine, to be recovered in the same manner, as if he had refused to accept the said office, and the council thereupon shall forthwith declare the said office to be void, and shall signify the same by notice in writing under the hands of three or more of them, countersigned by the town clerk, to be affixed in some public place within the borough, and the said office shall thereupon become void; but every person so becoming disqualified and ceasing to hold such office on account of his being declared a bankrupt, or of his applying to take the benefit of any act for the relief of insolvent debtors, or having compounded with his creditors as aforesaid, shall, on obtaining his certificate, or on payment of his debts in full, be capable (if otherwise qualified) of being re-elected to such office, and every person becoming disqualified to hold such office on account of absence as aforesaid shall on his return to such borough

be capable of being re-elected to such office, provided he shall then be otherwise qualified."

DISQUALIFICATION FOR OFFICE

Where A a councillor whose term of office would expire on Nov. 1st, went into liquidation and never acted again, but no notice declaring his place vacant was given by the town council, no other candidate was duly nominated for the office on Nov. 1st, and A. was under 22 Vict. c. 35, s. 8 subs. 4., (see post p. 245) declared re-elected; a mandamus calling on the mayor &c. of the borough to declare the "office lately held by A." void, was refused on the ground that the office was already full, and could not be declared void; nor would a mandamus lie for a fresh election, the council never having declared the office vacant after the liquidation and it was held that if there was any remedy it was by petition under 35 & 36 Vict. c. 60 s. 12. *Reg. v. Mayor of Welskpool*, 35 L. T. N. S. 594.

Disqualification by liquidation by arrangement.

The provisions of s. 52 of 5 & 6 Will. 4., c. 76 are extended by s. 21 of the Debtors' Act, 1869 (32 & 33 Vic. c. 62, s. 21), to "every arrangement or composition with creditors under the Bankruptcy Act 1869, whether the same is made by deed or otherwise."

Composition

The construction of these sections in regard to a person already a member of the council is discussed in the case of *Hardwick v. Brown*, 8 L. R., C. P., 406.

"The proper construction, is, that immediately upon the bankruptcy, &c., the person so becoming bankrupt, &c., shall be disqualified and shall cease to do any act as mayor, alderman, or councillor; and that,

**DISQUALIFI-
CATION FOR
OFFICE.**

upon the proper notice being given, the office shall become void for all purposes. If that be the true construction of the section, the office would not become void until the notice was given." (*Ibid*, p. 411.) compare also *R. v. Mayor of Leeds*, 7 A. & E. 963.

Payment of
debts in full,
what, in
case of
composition.

A question was raised but not decided in the case of *Hardwick v. Brown* (supra), as to the meaning of the words "payment of his debts in full" in s. above : and whether under these words a person who had compounded with his creditors would be qualified for reelection on payment of the composition. It seems probable that he would not.

Uncertifi-
cated
bankrupt.

An uncertificated bankrupt may, however, be elected, the above provisions having been held to disqualify only where the bankrupt holds office at the time of his bankruptcy. *R. v. Chitty*, 5 A. & E. 609.

In addition to the above disqualifications further disqualifications are imposed by various statutes relating to the conduct of elections (see Penalties).

Candidate's
personally
guilty of
bribery.

By 31 & 32 Vict. c. 125, s. 43, candidates found by the report of the judge on petition personally guilty of bribery are incapable for seven years of holding any office under 5 & 6 Will. 4. c. 76, or 3 & 4 Vict. c. 108, or any Municipal office. As to when a candidate is considered to have been found guilty, see Penalties.

By 35 & 36 Vict. c. 60, s. 3, post App. it would seem that this disqualification is extended to persons found guilty of similar acts at a Municipal Election.

By 31 & 32 Vict. c. 125, s. 45, the same dis-
 qualifications apply to any person other than the
 candidate found guilty of bribery in any proceed-
 ing in which after notice of the charge he has had
 an opportunity of being heard (as to which see
 Penalties p. 75).

DISQUALIFI-
 CATION
 FOR OFFICE.

Persons
 found guilty
 of bribery.

This disqualification would also appear to be
 extended to persons found guilty of similar acts at
 Municipal Elections: See 35 & 36 Vict. c. 60,
 3, post App.

By 35 & 36 Vict. c. 60, s. 4, post p. App, any can-
 didate found personally guilty by a Municipal Elec-
 tion court, of any corrupt practice, is during seven
 years incapable of holding any municipal office.
 (See Penalties.) By the same section, the same dis-
 qualification is imposed if any person is upon
 an indictment or information found guilty of any
 corrupt practice at an election, or is in any action
 or proceeding adjudged to pay a penalty or for-
 feiture for any corrupt practice at an election,
 whether he was a candidate at the election
 or not.

Candidates
 personally
 guilty of cor-
 rupt
 practices.

Persons
 found guilty
 of corrupt
 practice.

By 35 & 36 Vict. c. 60, s. 5, post App. (The
 Corrupt Practices Municipal Elections Act), it is
 enacted that: "If it is found by any election court
 acting under the provisions of this Act, that a
 candidate has by an agent been guilty of any cor-
 rupt practice at an election, or that any act herein-
 after in this Act declared to be an offence against
 this Act has been committed at an election by a
 candidate or by an agent for a candidate with the
 candidate's knowledge and consent, the candidate
 shall during the period for which he was elected
 to serve, or for which, if elected, he might have

Disqualifica-
 tion for
 corrupt prac-
 tice by
 agent, and
 for offences
 against
 C. P. M. E.
 Act.

**DISQUALIFI-
CATION
FOR OFFICES.**

Removal of
disqualifica-
tion on proof
that dis-
qualification
procured by
perjury.

Conviction
for treason
or felony, &c.

Notice of
disqualifica-
tion.

**PROCED-
URES AT
MUNICIPAL
ELECTIONS.**

Distinction
of procedure
at parlia-
mentary and
municipal
elections.

served, be disqualified for being elected to and for holding any municipal office in the borough for which the election was held." For what are such "offences against the Act," see ss. 7, 8, post App.

Any person disqualified by virtue of any of the provisions of 35 & 36 Vict. c. 60 may obtain the removal of such disqualification on proof that it was procured by perjury. See s. 4. (Penalties.)

By 33 & 34 Vict. c. 23, s. 2, a person convicted of treason or felony and sentenced to death or penal servitude or any term of imprisonment with hard labour, or exceeding twelve months vacates any office in any corporation which he may hold at the time of conviction unless he receive a free pardon within two months, or before the office is filled up: and is incapable of holding such office until he have suffered the punishment to which he has been sentenced or such other punishment as by competent authority may be substituted for the same, for receive a free pardon.

As to giving notice of the disqualification of a candidate before the poll for the purpose of seating an unsuccessful candidate, see cap. on Scrutiny, p. 126. *R. v. Franklin*, 6 Ir. R. C. L. 239.

In considering questions as to offences or irregularities at elections in the following pages it is to be noticed that the procedure at Parliamentary and Municipal Elections is dealt with separately by the Ballot Act; and s. 20 only assimilates the procedure at the latter to that of the former, so far as relates to the poll: and the rules in the 1st Part of the 1st Schedule consequently are only applicable to Municipal Elections so far as they relate to

the poll, and not to other parts of the election, *Northcote v. Pulsford*, 10 L. R., C. P. 476.

PROCEED-
INGS AT
MUNICIPAL
ELECTIONS.

Thus the nomination at municipal elections till the passing of 38 & 39 Vict. c. 40, continued to be governed by the old law (*Ibid.*), and now is regulated by the last-named statute (see post App.).

One third of the whole number of councillors go out of office annually on the 1st of November, when the new elections take place, 5 & 6 Will. 4, c. 76, ss. 30, 31.

Election of
one third of
the council
annually on
1st Nov.

By 5 & 6 Will. 4, c. 76, ss. 32, 33, 35, the mayor of a borough is the returning officer, and has the general conduct of the election, providing polling-booths, &c.: aldermen are appointed to preside in the different wards where the borough is divided into wards. (See ss. 43, &c.).

Mayor has
conduct of
election.

Section 36 of 5 & 6 William 4, c. 76, enables an alderman to be appointed to act as returning officer in a case where the mayor himself is a candidate. *Reg v. White*, 2 L. R., Q. B. 557. By 7 Will. 4 & 1 Vict. c. 78, s. 16, where the borough is divided into wards, the mayor in the case of the illness or incapacity of any alderman at any election may appoint another alderman to act in his place: or (by 16 & 17 Vict. c. 79, s. 10) may appoint a councillor so to act if the number of aldermen is insufficient.

Deputy may
be appointed
for mayor

for presiding
alderman.

The proceedings at nominations are now regulated by 38 & 39 Vict., c. 40, s. 1, post App. Notice of the election is to be given by the town clerk nine days before the day of election, this notice is to be in the Form No. 1 in the Schedule. By

NOMINATION.

Notice of
election
given by
town clerk.

NOMINATION. subs (3), (see post Appendix), the nomination-papers have to be delivered seven clear days before the day of election; and where the notice published by the town clerk made it appear that the last day on which such nomination-papers could be delivered was October 23d (when it was really the 22d), and two candidates were misled thereby: the court considered the notice so misleading that they set aside the election. *Howes v. Turner*, 1 C. P. D. 670.

Candidates, how nominated.

Candidates are nominated in writing, subscribed by two enrolled burgesses as proposer and seconder, and by eight other enrolled burgesses of the borough or ward as assenting to the nomination. The nomination-paper must state the surname and other names of the person nominated, with his place of abode and description, and must be in the form contained in the Schedule to the Municipal Elections Act, 1875 (see post App.), or to the like effect. (38 & 39 Vict., c. 40, s. 1, subs. (2).)

Seem, proposer, &c., must belong to the same ward.

Where a borough is divided into wards, the persons subscribing the nomination-paper must, it would seem, belong to the same ward. *Reg. v. Parkinson*, L. R., 3 Q. B. 11, and compare cases cited at p. 135 supra.

All names of candidates must be fully stated.

Great care must be taken that the whole of the names of the candidate are fully and correctly stated in the nomination paper, or the nomination will be bad; thus, where a candidate whose name was "Robert Vicars Mather" was described as "Robert V. Mather" the nomination was held bad. *Mather v. Brown*, 1 C. P. D. 596.

This objection would not apply to the names of the eight assenters. *Howes v. Turner*, 1 C. P. D. 670.

The proposer, seconder, and eight assenters must be on the burgess roll or ward list for the time being (s. 5) in force.

In the case of an election which took place on the 1st of November, but for which the nomination took place on the 23rd of October, a question was raised as to which was the "burgess roll for the time being in force:" whether the one for the year ending November 1st or the one coming into force on that day: it was held sufficient if a candidate's name appeared in the new list, though not on the old one which was in force at the time when the nomination paper was signed. *Budge v. Andrews*, 3 C. P. D. 510. In the same case other questions were raised but not decided as to which list applied to the case of the nominators. Stat. 41 & 42 Vict. c. 26, ss. 33 & 34, now provides that the new list shall apply in all these cases, post App.

It will be noticed that the form of nomination paper given by the act (see post App.) directs that "the number on the burgess roll of the burgess subscribing, with the situation of the property in respect of which he is enrolled on the burgess roll," must be stated. This provision is sufficiently complied with if the property of the proposer, seconder, or assenters is described on the nomination paper in such a manner that it may be easily recognised; it need not necessarily be described by the same terms by which it is described on the burgess roll. *Soper v. Mayor of Basingstoke*, 2 C. P. D. 440.

The nomination paper must be delivered by the candidate himself or his proposer or seconder to

NOMINATION.

Proposer, seconder, and eight assenters must be on the burgess roll
Which burgess roll: new or old

Description of proposer and seconder

Delivery of nomination paper to the town clerk.

NOMINATION. the town clerk seven days at least before the day of election, and before five o'clock in the afternoon of the last day on which any such nomination paper may by law be delivered; the town clerk is forthwith to send notice of such nomination to each person nominated. (See s. 1, subs. (3), post App.).

How to be delivered

Where the nomination paper was delivered, not by the candidate or his proposer or seconder, but by an agent, the nomination was held bad. *Monks v. Jackson*, 1 C. P. D. 683.

Mistake as to time of delivering nomination paper.

Where in consequence of being misled by a faulty notice given by the town clerk in pursuance of s. 1, subs. (1) (see supra p. 242), the nomination papers of two candidates were delivered too late, the court set aside the election. *Homes v. Turner*, 1 C. P. D. 670.

Vacancies to be filled up from persons nominated.

By 22 Vict. c. 35, s. 8, it is provided that:—

At any election of councillors to be held for any borough or ward:

1. If the number of persons so nominated shall exceed the number to be elected,

The councillors to be elected shall be elected from the persons so nominated, and from them only:

If number of vacancies and candidates are equal, all are elected.

2. If the number of persons so nominated shall be the same as the number to be elected,

Such persons shall be deemed to be elected; and the mayor or alderman, as the case may be, shall publish a list of the names of the persons so elected, not later than eleven of the clock in the morning of the said day of election:

3. If the number of persons so nominated

shall be less than the number to be elected:

NOMINATION.

If number of persons nominated less than vacancies.

Such persons shall be deemed to be elected. Such of the retiring councillors highest on the poll at their election, or, if the poll were equal, or there were no poll, such as shall be nominated by the mayor, shall be deemed to be re-elected to make up the number required to be elected. And the mayor or alderman, as the case may be, shall publish a list of the names of all the persons so elected respectively, not later than eleven of the clock in the morning of the said day of election :

4. If no person be so nominated,

The retiring councillor shall be deemed to be re-elected, and the mayor or alderman, as the case may be, shall publish a list of the names of all the persons so elected, not later than eleven of the clock in the morning of the said day of election.

By Mun. El. Act, 1875, s. 1, subs. (5) it is provided that—

Attendance of the mayor to hear objections.

“The mayor shall attend at the Town Hall on the day next after the last day for the delivery of nominations to the town clerk, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made to a nomination paper, such objection to be made in writing. The candidate nominated by each nomination paper, and one other

NOMINATION.

person, appointed by or on behalf of the candidate as hereinafter mentioned, and no person other than aforesaid, shall, except for the purpose of assisting the mayor, be entitled to attend such proceedings, and each candidate and the person appointed by him shall, during the time appointed for the attendance of the mayor for the purposes of this section, have respectively power to object to the nomination paper of every person nominated at the same election."

* * * * *

"The appointment by or on behalf of candidates of persons as aforesaid shall be made in writing under the hand of the candidate, or, in case he is absent from the United Kingdom, then under the hand of his proposer or seconder, and shall be delivered to the town clerk before five o'clock in the afternoon of the last day on which nomination papers may by law be delivered."

Decision of
the mayor
when final.

By the same sub-section it is provided that—

"The decision of the mayor, which shall be given in writing, shall, if disallowing any objection to a nomination paper, be final; but if allowing the same, shall be subject to reversal on petition questioning the election or return."

Where, therefore, the mayor has under this section improperly allowed an objection to a nomination paper, the Common Pleas Division has jurisdiction, under 35 & 36 Vict. c. 60, s. 12,

to entertain a case questioning the validity of the election. *Budge v. Andrews*, 3 C. P. D. 510.

The jurisdiction of the mayor, however, only extends to objections as to the form of the nomination paper itself; he cannot deal with an objection made to it on the ground that it was not delivered in proper time. *Howes v. Turner*, 1 C. P. D. 670.

Persons absent from the United Kingdom cannot be nominated without their written consent, given in the manner prescribed by the Act (s. 2, post App.).

By Mun. El. Act, 1875, s. 1, subs. 3—

“The Town Clerk shall, at least four days before the day of election, cause the surnames and other names of all persons duly nominated, with their respective places of abode and descriptions, and the names of the persons subscribing their respective nomination papers as proposers and seconders, to be printed and placed on the door of the Town Hall, and in some conspicuous parts of the borough or ward for which such election is to be held.”

Where more candidates are nominated at any municipal election than there vacancies to be filled at such election, any of such candidates may withdraw from his candidature by notice signed by him and delivered to the town clerk not later than two o'clock in the afternoon of the day next after the last day for the delivery of nomination papers to the town clerk; provided that such notices shall take effect in the order in which they are delivered

NOMINATION.

Jurisdiction of the mayor only over objections to nomination paper itself.

Candidates out of United Kingdom ineligible without written consent.

Names of persons nominated, published by town clerk.

Withdrawal of candidates.

NOMINATION. to the town clerk, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies to be filled. See Mun. El. Act, 1875, s. 7, post App.

Burgess roll conclusive of the right to vote. The burgess roll or ward list is now conclusive of the right to vote at a municipal election except in cases of personal disqualification. See Scrutiny; 38 & 39 Vict., c. 40, s. 5, post App.

Which burgess roll in force. In an election taking place on the 1st of November the "burgess for the time being in force" is the one that comes into force on that day. See 41 & 42 Vict. c. 26, s. 34, and compare *Budge v. Andrews*, 3 C. P. D. 510.

Borough divided into wards. Where a borough is divided into wards the voters vote each in his own ward; and as to cases in which a voter is on the roll in two wards see 5 & 6 Will. 4, c. 76, ss. 29, 43—46, and cases cited at p. 135 supra (Scrutiny).

Voter on burgess roll in two wards.

Town council may divide borough into polling districts. The Town Council may divide any borough or ward into polling districts for convenience of polling, and it is the duty of the overseers to divide the burgesses between such districts.

POLL. By s. 20 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), post App., the enactments relating to the poll at parliamentary elections are made applicable to municipal elections; and the poll is further regulated by s. 64 of the first schedule of the same Act. See "Conduct of the Election."

Regulation of polling stations.

By the Municipal Elections Act, 1875, s. 4 (post App.), however, rules 16 & 19 of the Ballot Act (post App.) do not apply to municipal elections; but new provisions are made as to the situation,

division, and allotment of polling stations, and the arrangements for taking the poll therein.

POLL.

The poll opens at 9 A.M. and closes at 4 P.M.
See 5 & 6 Will. 4, c. 76, s. 32.

Opening and closing of the poll.

Two questions only may be asked of a voter before voting, viz.:

Voter may only be asked two questions.

1. Are you the person whose name appears as A. B. on the burgess-roll now in force for this borough, being registered therein as rated for property described to be situated in — — — ? (*Here specify the street, &c., as described in the burgess-roll*).

2. Have you already voted at the present election?

A voter (if asked these questions) is not qualified to vote until he have answered them; and if he make a false answer he is guilty of a misdemeanor. (5 & 6 Will. 4, c. 76, s. 34).

Making a false answer is a misdemeanor.

It is the duty of the presiding officer at the poll or a clerk deputed by him, whichever in fact undertakes it, to deliver to the voters ballot-papers bearing the official mark, and to be present, so that each voter, before placing his ballot-paper in the box, can show him the official mark on its back; but *prima facie*, and in the absence of it appearing that a clerk has been deputed by such presiding officer to fulfil it, the duty lies on such officer; Ballot Act (35 & 36 Vict. c. 33, s. 2). *Pickering v. James*, 8 L. R., C. P. 489.

Duties of presiding officer at poll.

In the same case the court were divided as to whether there is also a duty on the presiding officer to ascertain that the official mark is on a voting-paper before a voter deposits it in ballot-box.

POLL.

For a breach of such a duty, though not wilful or malicious, a presiding officer is liable to an action by a party aggrieved. (Ibid.)

As to other breaches of duty by the presiding officer in conducting the poll, and how far they affect the validity of the election, see "Conduct of the Election."

Candidate cannot be excluded from polling booths.

A candidate has a right to be present in any polling-booth during the polling. *Clementson v. Mason*, 9 L. R., C. P. 209. (See "Conduct of the Election.")

Equality of votes : mayor has casting vote.

In case of an equality of votes for two or more persons the mayor is (5 & 6 Will. 4, c. 76, s. 35) to name from among those persons for whom the number of votes shall be equal, so many as shall be necessary to complete the requisite number of persons to be chosen.

MUNICIPAL ELECTION PETITIONS.

The result of any Municipal Election is now questioned by petition under 35 and 36 Vict. c. 60, ss. 12 et seq : post App. and the rules made pursuant to that act : See post App. : see also "Practical Suggestions."

Petition or quo warranto.

As to the questions which may be raised by petition under 35 & 36 Vict. c. 60, s. 12, and how far it supersedes the procedure by Quo Warranto see practical suggestions, p. 157.

Municipal election expenses.

The expenses incurred in preparing and printing burgess lists, ward lists, and notices, and in other matters attending elections mentioned in the Municipal Corporations Act (5 & 6 Will. 4, c. 76) are by s. 92 of that act charged on the borough fund.

Acts which, if committed at parliamentary elections, would be punishable as corrupt practices are now similarly punishable at municipal elections, See 35 & 36 Vict. c. 60, s. 3. See "Corrupt Practices" and "Penalties."

**CORRUPT
PRACTICES
AT
MUNICIPAL
ELECTIONS.**

By s. 6 of 35 & 36 Vict. c. 60, it is provided : "An election for a borough or a ward thereof shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election for such borough or ward as would by the common law of Parliament avoid an election of members to serve in Parliament for a parliamentary borough." As to payments for conveying voters to the poll, see "Corrupt Practices," p. 23.

Avoidance of election on ground of general corruption, &c.

Payment for conveyance of voters.

The Commissioner trying the petition has under 35 & 36 Vict. c. 60, s. 19, an absolute discretion over costs with which the Court has no jurisdiction to interfere. *Lovering v. Dawson*, 10 L. R., C. P. 726. See "Practical Suggestions." As to the principles on which this discretion will be exercised, see Parliamentary cases (Practical Suggestions), p. 204.

COSTS.

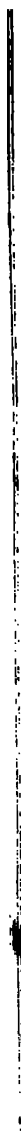
Commissioner has absolute discretion. How exercised.

The taxation of costs is regulated by 35 & 36 Vict. c. 60, s. 19 (2) post App.: This is verbatim the same as the part of Parl. El. Act, 1868, s. 41, as to taxation of costs in Parliamentary cases see the cases quoted as to the latter, p. 209., and *Hargreaves v. Scott*, 4 C. P. D. 21.

Taxation of costs.

The expenses of the Court for the trial of Municipal Election Petitions are provided for by 35 & 36 Vict. c. 60, s. 22, post App.

Expenses of the court.



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APPENDIX.

1.

6 ANNE. C. 7.

25. And be it further enacted by the authority aforesaid, that no person who shall have in his own name, or in the name of any person or persons in trust for him, or for his benefit, at any new office or place of profit whatsoever under the Crown, which at any time since the 25th day of October, in the year of our Lord 1705, have been created or erected, or hereafter shall be created or erected, nor any person who shall be a commissioner or sub-commissioner of prizes, secretary, or receiver of the prizes, nor any comptroller of the accounts of the army, nor any commissioner of transports, nor any commissioner of the sick and wounded, nor any agent for any regiment, nor any commissioner for any wine licenses, nor any governor or deputy governor of any of the plantations, nor any commissioners of the navy employed in any of the out-ports, nor any person having any pension from the Crown during pleasure, shall be capable of being elected or of sitting or voting as a member of the House of Commons in any Parliament which shall be hereafter summoned and holden.

Persons in office, &c. made incapable of being elected members of the House of Commons.

Extended to pensioners for years certain by 1 G. I. c. 2, s. 1.

26. Provided always, that if any person being chosen a member of the House of Commons shall accept of any office of profit from the Crown during such time as he shall continue a member, his election shall be, and is hereby declared to be, void, and a new writ shall issue for a new election as if such person so accepting was naturally dead. Provided, nevertheless, that such person shall be capable of being again elected, as if his place had not become void as aforesaid.

Accepting office of profit while a member, election void, but may be again elected.

27. Provided also, and be it enacted, that in order to prevent for the future too great a number of commissioners to be appointed or constituted for executing of any office, that no greater number of commissioners shall be made or constituted for the execution of any office than have been employed in the execution of such respective office at some time before the first day of this present parliament.

No office to be executed by too many commissioners.

28. Provided also, that nothing herein contained shall extend or be construed to extend to any member of the House of Commons, being an officer in Her Majesty's navy or army, who shall receive any new or other commission in the navy or army respectively.

Not to extend to officers in the navy or army.

Persons disabled if returned as members, such election and return void.

Penalty on sitting £500.

29. And be it further enacted, that if any person hereby disabled or declared to be incapable to sit or vote in any Parliament hereafter to be holden, shall nevertheless be returned as a member to serve for any county, stewartry, city, town, or cinque port, in any such Parliament, such election and return are hereby enacted and declared to be void to all intents and purposes whatsoever. And if any person disabled, or declared incapable by this Act to be elected, shall after the dissolution or determination of this present Parliament, presume to sit or vote as a member of the House of Commons in any Parliament to be hereafter summoned, such person so sitting or voting, shall forfeit the sum of five hundred pounds, to be recovered by such person shall sue for the same in England, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed, and only one in parliance.

30. And be it further enacted and declared, that every person disabled to be elected, or sit or vote in the House of Commons of any Parliament of England, shall be disabled to be elected, or sit or vote in the House of Commons of any Parliament of Great Britain.

A.D. 1707.

CORRUPT PRACTICES PREVENTION ACT, 17 & 18 Vict.
c. 102.
1854.

17 & 18 Vict. c. 102.

An Act to consolidate and amend the Laws relating to bribery, treating, and undue influence at elections of Members of Parliament. [10th August 1854.]

WHEREAS the laws now in force for preventing corrupt practices in the election of members to serve in Parliament have been found insufficient: And whereas it is expedient to consolidate and amend such laws, and to make further provision for securing the freedom of such elections: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. [Repeal of Acts in Schedule A].

2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly: Bribery defined.

1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act, as aforesaid, on account of such voter having voted or refrained from voting at any election:
2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election:
3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such

17 & 18 Vict.
c. 102.

gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election :

4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour, to procure, the return of any person to serve in Parliament, or the vote of any voter at any election :
5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election :

And any person so offending shall be guilty of a misdemeanour, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of one hundred pounds to any person who shall sue for the same, together with full costs of suit : Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined.

3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :

1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election :
2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting at any election :

And any person so offending shall be guilty of a misdemeanour, and in Scotland of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of ten pounds to any person who shall sue for the same, together with full costs of suit.

Penalty.

Treating defined.

4. Every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time either before, during, or after

any election, directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit; and every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision shall be incapable of voting at such election, and his vote, if given, shall be utterly void and of no effect.

17 & 18 Vict
c. 102.

Penalty.

5. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter or shall thereby compel, induce, or prevail upon any voter either to give or refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanour, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of the suit.

Undue
influence
defined.

Penalty.

6. Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list to be entitled "The List

Names of
offenders to
be struck out
of register
and inserted
in separate
list.

- 17 & 18 Vict.
c. 102. of Persons disqualified for Bribery, Treating, or undue Influence," which last-mentioned list shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published.
- No cockades,
&c., to be
given at
elections. 7. No candidate before, during, or after any election shall in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall for every such offence forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction as aforesaid, or of any bands of music, or flags or banners, shall be deemed illegal payments within this Act.
- Penalty. 8. No person having a right to vote at the election for any county, city, borough, or other place shall be liable or compelled to serve as a special constable at or during any election for a member or members to serve in Parliament for such county, city, borough, or other place, unless he shall consent so to act; and he shall not be liable to any fine, penalty, or punishment whatever for refusing so to act, any statute, law, or usage to the contrary notwithstanding.
- Voters not
to serve as
special
constables
during
elections. 9. The pecuniary penalties hereby imposed for the offences of bribery, treating, or undue influence respectively shall be recoverable by action or suit by any person who shall sue for the same in any of Her Majesty's Superior Courts at Westminster, if the offence be committed in England or Wales; and in any of Her Majesty's Superior Courts in Dublin, if the offence be committed in Ireland; and in or before the Court of Session, if the offence be committed in Scotland; and not otherwise.
- Penalties
how to be
recovered. 10. It shall be lawful for any criminal court, before which any prosecution shall be instituted for any offence against the provisions of this Act, to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided always, that no indictment for bribery or undue influence shall be triable before any court of quarter sessions.
- Costs and
expenses of
prosecutions. Section 11 relating to the returning officer giving notice of election repealed by Ballot Act, 1872.
- In cases of
private pro-
secutions, if
judgment be
given for the 12. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the

defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given. 17 & 18 Vict. c. 102

13. It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this Act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment), with the conditions following: that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or the defendants, in case he or they shall be acquitted, his or their costs. defendant, he shall recover costs from the prosecutor.

14. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this Act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court out of which such writ or other process shall have issued; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay (a). Prosecutor not to be entitled to costs unless he shall have entered into a recognizance to conduct prosecution and pay costs. Limitation of actions.

Sections 15 to 22 repealed by 26 & 27 Vict. c. 29.

23. And whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: Be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment, by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of forty shillings for each offence to any person who shall sue for the same, together with full costs of suit. Refreshments to voters on the days of nomination or polling declared illegal.

Sections 24 to 32 repealed by 27 & 28 Vict. c. 29.

33. [Repealed by 41 & 42 Vict. c. 79.]

Section 34 repealed by 26 & 27 Vict. c. 29.

(a) By 26 & 27 Vict. c. 29, s. 5, the provisions of this section are extended to a misdemeanour or to any other offence under the C. P. Acts not punishable by a penalty or forfeiture as well as to proceedings for any offence punishable by a penalty or forfeiture.

17 & 18 Vict.
c. 102.

In actions
for penalties,
parties, &c.,
to be compe-
tent wit-
nesses.

Candidate
declared
guilty of
bribery in-
capable of
being elected
during Par-
liament then
in existence.

Short title.

Interpreta-
tion of
terms.

35. On the trial of any action for recovery of any pecuniary penalty under this Act the parties to such action, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence in the same manner as parties, and their husbands and wives are competent and compellable to give evidence in actions and suits under the Act of the fourteenth and fifteenth Victoria, chapter ninety-nine, and "The Evidence Amendment Act, 1853," but subject to and with the exceptions contained in such several Acts: Provided always, that any such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party giving it.

36. If any candidate at an election for any county, city, or borough shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence.

37. In citing this Act in any instrument, document, or proceeding, or for any purpose whatsoever, it shall be sufficient to use the expression "The Corrupt Practices Prevention Act, 1854."

38. Throughout this Act, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "county" shall extend to and mean any county, riding, parts, or division of a county, stewardry, or combined counties respectively returning a member or members to serve in Parliament; and the words "city or borough" shall mean any university, city, borough, town corporate, county of a city, county of a town, cinque port, district of burghs, or other place or combination of places (not being a county as hereinbefore defined) returning a member or members to serve in Parliament; and the word "election" shall mean the election of any member or members to serve in Parliament; and the words "returning officer" shall apply to any person or persons to whom, by virtue of his or their office under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person or persons may be called; and the words "revising barrister" shall extend to and include an assistant barrister and chairman, presiding in any court held for the revision of the lists of voters, or his deputy in Ireland, and a sheriff or sheriff's Court of Appeal in Scotland, and every other person whose duty it may be to hold a court for the revision and correction of the list of registers of voters in any part of the United Kingdom; and the word "voter" shall mean any person who has or claims to have a right to

vote in the election of a member or members to serve in Parliament; and the words "candidate at an election," shall include all persons elected as members to serve in Parliament at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election; and the words "personal expenses," as used herein with respect to the expenditure of any candidate in relation to any election, shall include the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election.

39. This Act shall continue in force for one year next after the passing thereof, and thenceforth to the end of the then next session of Parliament.

The SCHEDULE A above referred to.

[Repeal of Acts.]

SCHEDULE B.

[Repealed by Ballot Act 1872.]

[This Act has been renewed by continuing Acts from time to time : see 42 & 43 Vict. c. 75, Sched.]

26 & 27 Vict. c. 29. An Act to amend and continue the Law relating to Corrupt Practices at Elections of Members of Parliament. [8th June 1863.]

WHEREAS the "Corrupt Practices Prevention Act, 1854," as amended by an Act of the Session holden in the twenty-first and twenty-second years of Her Majesty, chapter eighty-seven, is limited to continue in force until the first day of September one thousand eight hundred and sixty-three, and it is expedient further to amend the said Acts and to continue from thence until the end of the next Session of Parliament; and the same in manner herein-after mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. 1. The expression "the Corrupt Practices Prevention Act" shall include this Act and the said Act of the twenty-first and twenty-second years of the reign of Her present Majesty, and the Corrupt Practices Prevention Act, 1854, as amended by the said other acts.

Expenses of Elections.

No payment, &c., shall be made by or on behalf of candidates otherwise than through authorised agents. 2. No payment (except in respect of the personal Expenses of a Candidate), and no advance, loan, or deposit, shall be made by or on behalf of any candidate at an election, before or during, or after such election, on account of or in respect of such election, otherwise than through an agent or agents whose name and address or names and addresses have been declared in writing to the returning officer on or before the day of nomination, or through an agent or agents to be appointed in his or their place as herein provided; and any person making any such payment, advance, loan, or deposit, otherwise than through such agent or agents, shall be guilty of a misdemeanour, or in *Scotland* of an offence punishable by fine and imprisonment. It shall be the duty of the returning officer to publish, on or before the day of nomination, the name and address or the names and addresses of the agent or agents appointed in pursuance of this section.

In the event of the death or legal incapacity of any agent

appointed in pursuance of this section, the candidate shall forthwith appoint another agent in his place on giving notice to the returning officer of the name and address of the person so appointed, which shall be forthwith published by the returning officer. 26 & 27 Vict.
c. 29.

3. All persons who have any bills, charges or claims upon any candidate for or in respect of any election shall send in such bills, charges, or claims, within one month from the day of the declaration of the election to such agent or agents as aforesaid, otherwise such person shall be barred of their right to recover such claims and every or any part thereof: Provided always, that in case of the death within the said month of any person claiming the amount of such bill, charge, or claim, the legal representative of such person shall send in such bill, charge, or claim within one month after obtaining probate or letters of Administration, or confirmation as executor, as the case may be, or the right to recover such claim shall be barred as aforesaid: Provided also, that such bills, charges, and claims shall and may be sent in and delivered to the candidate, if, and so long as, during the said month, there shall, owing to death or legal incapacity, be no such agent. Bills, &c. to
be sent in
within one
month to
agent, or
right to
recover
barred.

4. A detailed statement of all election expenses incurred by or on behalf of any candidate, including such expected payments as aforesaid, shall within two months after the election, (or in cases where by reason of the death of the creditor no bill has been sent in within such period of two months, then within one month after such bill has been sent in), be made out and signed by the agent or, if there be more than one, by every agent who has paid the same (including the candidate in cases of payments made by him), and delivered with the bills and vouchers relative thereto, to the returning officer, and the returning officer for the time being shall, at the expense of the candidate, within fourteen days, insert or cause to be inserted an abstract of such statement, with the signature of the agent thereto, in some newspaper published or circulating in the county or place where the election was held; and any agent or candidate who makes default in delivering to the returning officer the statement required by this section shall incur a penalty not exceeding five pounds for every day during which he so makes default; and any agent or candidate who wilfully furnishes to the said returning officer an untrue statement shall be guilty of a misdemeanor, or in *Scotland* of an offence punishable by fine and imprisonment; and the said returning officer shall preserve all such bills and vouchers, and during six months after they have been delivered to him permit any voter to inspect the same, on payment of a fee of one shilling. As to publication of
statement of
election
expenses.

26 & 27 Vict.
c. 29.

Sect. 14 of
17 & 18 Vict.
c. 102, ex-
tended to
misdemean-
ors, &c.

General
allegations
sufficient in
indictments.

Evidence of
witness on
election
committee
and before
commis-
sions.

Legal Proceedings.

5. The provisions of the fourteenth section of the Corrupt Practices Prevention Act, 1854, shall extend to a misdemeanor or to any other offence under the Corrupt Practices Prevention Acts not punishable by a penalty or forfeiture, as well as to proceedings for any offence punishable by a penalty or forfeiture.

6. In any indictment or information for bribery or undue influence, and in any action or proceeding for any penalty for bribery, treating, or undue influence, it shall be sufficient to allege that the defendant was at the election at or in connexion with which the offence is intended to be alleged to have been committed guilty of bribery, treating, or undue influence (as the case may require); and in any criminal or civil proceedings in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person therein named having been a candidate thereat.

7. No person who is called as a witness before any election committee, or any commissioners appointed in pursuance of the act of the session holden in the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-seven, shall be excused from answering any question relating to any corrupt practice at, or connected with, any election forming the subject of inquiry by such committee or commissioners, on the ground that the answer thereto may criminate or tend to criminate himself: provided always, that where any witness shall answer every question relating to the matters aforesaid which he shall be required by such committee or commissioners (as the case may be) to answer, and the answer to which may criminate, or tend to criminate him, he shall be entitled to receive from the committee, under the hand of their clerk, or from the commissioners, under their hands (as the case may be), a certificate stating that such witness was, upon his examination, required by the said committee or commissioners to answer questions or a question relating to the matters aforesaid, the answers or answer to which criminated or tended to criminate him, and had answered all such questions or such question; and if any information, indictment, or action be at any time thereafter pending in any court against such witness for any offence under the Corrupt Practices Prevention Acts, or for which he might have been prosecuted or proceeded against under such Acts, committed by him previously to the time of his giving his evidence, and at or in relation to the election concerning or in relation to which the witness may have been so examined, the court shall, on production and proof of such certificate, stay the proceedings in such last-mentioned information, indictment, or action, and

may, at its discretion, award to such witness such costs as he may have been put to in such information, indictment, or action: provided that no statement made by any person in answer to any question put by or before such election committee or commissioners shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, civil or criminal. 26 & 27 Vict. c. 29.

Election Committees.

8. [Repealed by Parl. El. Act, 1868.]

9. Where an election committee has reported to the House of Commons that certain persons named by them have been guilty of bribery or treating, and where it appears by the report of any commission of inquiry into corrupt practices at any election made to her Majesty and laid before Parliament that certain persons named by them have been guilty of the offences of bribery or treating, and have not been furnished by them with certificates of indemnity, such report, with the evidence taken by the commission, shall be laid before the Attorney General, with a view to his instituting a prosecution against such persons if the evidence should, in his opinion, be sufficient to support a prosecution. Prosecutions for bribery.

Repeal.

10. [Repeal of Acts.]

11. The Corrupt Practices Prevention Acts shall continue in force for a period of five years from the date of the passing of this Act, and from thenceforth until the end of the then next Session of Parliament. Continuance of Corrupt Practices Prevention Acts.

THE SCHEDULE.

[Repeal of Acts.]

[This Act has been continued from time to time, see 42 & 43 Vic. c. 75, sched.]

THE REPRESENTATION OF THE PEOPLE ACT, 1867.

30 & 31 Vict. c. 102.

An Act further to amend the Laws relating to the Representation of the People in *England* and *Wales*.
[15th August, 1867.]

30 & 31 Vict. c. 102. WHEREAS it is expedient to amend the laws relating to the representation of the people in *England* and *Wales* :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. 1. This Act shall be cited for all purposes as "The Representation of the People Act, 1867."

Application of Act. 2. This Act shall not apply to *Scotland* or *Ireland*, nor in anywise affect the election of members to serve in Parliament for the Universities of *Oxford* or *Cambridge*.

Restriction as to number of votes in certain counties and boroughs ; 9. At a contested election for any county or borough represented by three members no person shall vote for more two candidates.

and in the city of London. 10. At a contested election for the City of *London* no person shall vote for more than three candidates.

No elector who has been employed for reward within six months of an election to be entitled to vote. 11. No elector who within six months before or during any election for any county or borough shall have been retained, hired, or employed for all or any of the purposes of the election for reward by or on behalf of any candidate at such election, as agent, canvasser, clerk, messenger, or in other like employment, shall be entitled to vote at such election, and if he shall so vote he shall be guilty of a misdemeanour.

Provision for increased polling places in counties, &c. 34. In every county the justices of the peace having jurisdiction therein or in the larger part thereof, assembled at some court of general or quarter sessions, or at some adjournment thereof, held after the passing of this Act, may, if they think convenience requires it, divide such county into polling districts, and assign to each district a polling place, in such manner as to enable each voter, so far as practicable, to have a polling place within a convenient distance of his residence ; and the justices shall advertise, in such manner as they think fit a description of the polling districts so constituted by them,

and the name of the polling place assigned to each district, and shall name the polling places at which the Revising Barristers are to hold their courts, and no revising barrister shall be obliged to hold his courts at any polling places not so named: Provided that the justices of the peace for the *Isle of Ely*, assembled as aforesaid, shall carry into effect the provisions of this section so far as regards the said *Isle of Ely*; but nothing herein contained shall affect the powers conferred by any other Act of Parliament of altering polling places or polling districts, or of creating additional polling places or districts:

30 & 31 Vict.
c. 102.

Proviso as to
Isle of Ely.

The local authority of every borough shall, if they think convenience requires it, as soon as may be after the passing of this Act, divide such borough into polling districts, and the returning officer shall in the case of a contested election provide at least one booth or room for taking the poll in each polling district; and in cases where a Parliamentary borough is constituted of two or more towns the distance between two of which shall exceed two miles, there shall be provided a booth or room for taking the poll in each of such towns:

Where any parish in a borough is divided into or forms part of more than one polling district, the overseers shall, so far as practicable, make out the list of voters in such manner as to divide the names in conformity with each polling district:

The Town Clerk, as defined by the Act of the Sixth *Victoria*, chapter eighteen, shall cause the list of voters for each borough to be copied, printed, arranged, and signed, and delivered in the manner directed by the said Act, so as to correspond with the division of the borough into polling districts.

A description of the polling districts made or altered in pursuance of this Act shall be advertised by the local authority in such manner as they think fit, and notice of the situation, division, and allotment of the polling booth or place for each district shall be given in manner now required by law:

The local authority shall mean in every municipal borough, and in every borough any part of which forms a municipal borough, the Town Council of such borough, and in other boroughs the justices of the peace acting for such borough, or if there be no such justices then the justices acting for the division of the county in which such borough or the greater part thereof is situate; and in cases where a Parliamentary borough is constituted by the combination of two or more municipal boroughs, then the local authority shall mean the Town Council of that municipal borough in which the nomination takes place.

30 & 31 Vict.
c. 102.

The local authority may from time to time alter any districts made by them under this Act.

35. [Repealed by 35 & 36 Vict. c. 33.]

Payment of
expenses of
conveying
voters in
boroughs to
the poll
illegal,
except herein
named.

36. It shall not be lawful for any candidate, or any one on his behalf, at any election for any borough, except the several boroughs of *East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury*, to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person; and if any such candidate, or any person on his behalf, shall pay any money on account of the conveyance of any voter to the poll, such payment shall be deemed to be an illegal payment within the meaning of "The Corrupt Practices Prevention Act, 1854."

Rooms to be
hired for
taking polls
wherever
they can be
obtained.

37. At every contested election for any county or borough, unless some building or place belonging to the county or borough is provided for that purpose, the returning officer shall, whenever it is practicable so to do, instead of erecting a booth, hire a building or room for the purpose of taking the poll.

* * * * *

39. [Repealed by 35 & 36 Vict. c. 33.]

Receipt of
parochial
relief to
apply to
counties as
well as
boroughs.

40. The thirty-sixth section of the Act of the second year of King *William* the Fourth, chapter forty-five, disqualifying persons in receipt of parochial relief from being registered as voters for a borough, shall apply to a county also, and the said section shall be construed as if the word "county" were inserted therein before the word "city;" and the overseers of every parish shall omit from the lists made out by them of persons entitled to vote for the borough and county in which such parish is situate the names of all persons who have received parochial relief within twelve calendar months next previous to the last day of *July* in the year in which the list is made out.

Miscellaneous.

As to
returning
officers
in new
boroughs.

47. In any borough named in Schedules (B) and (C) to this Act annexed, which is or includes a municipal borough, the mayor of such municipal borough shall be the returning officer, and in the other cases the returning officer shall be appointed in the same manner as if such places were included amongst the boroughs mentioned in Schedules (C) and (D) of the Act of the second year of His late Majesty *William* the Fourth, chapter forty-five, for which no persons are mentioned in such schedules as returning officers.

Corrupt
payment of
rates to be
punishable
as bribery.

49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or

refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made shall also be guilty of bribery, and punishable accordingly.

30 & 31 Vict
c. 102

50. No returning officer for any county or borough, nor his deputy, nor any partner or clerk of either of them, shall act as agent for any candidate in the management or conduct of his election as a member to serve in Parliament for such county or borough; and if any returning officer, his deputy, the partner or clerk of either of them, shall so act, he shall be guilty of a misdemeanour.

Returning
officer, &c.
acting as
agent guilty
of mis-
demeanor.

51. Whereas great inconvenience may arise from the enactments now in force limiting the duration of the Parliament in being at the demise of the Crown: Be it therefore enacted, That the Parliament in being at any future demise of the Crown shall not be determined or dissolved by such demise, but shall continue so long as it would have continued but for such demise, unless it should be sooner prorogued or dissolved by the Crown, anything in the Act passed in the sixth year of Her late Majesty Queen Anne, chapter seven, in any way notwithstanding.

Not neces-
sary to
dissolve
parliament
on any
future
demise of
the Crown.

52. Whereas it is expedient to amend the law relating to offices of profit the acceptance of which from the Crown vacates the seats of members accepting the same, but does not render them incapable of being re-elected: Be it enacted, That where a person has been returned as a member to serve in Parliament since the acceptance by him from the Crown of any office described in Schedule (H) to this Act annexed, the subsequent acceptance by him from the Crown of any other office or offices described in such schedule in lieu of and in immediate succession the one to the other shall not vacate his seat.

Members
holding
offices of
profit from
the Crown,
as in
schedule
(H.), not
required to
vacate their
seats on
acceptance
of another
office.

53. All writs to be issued for the election of members to serve in Parliament, and all mandates, precepts, instruments, proceedings, and notices consequent upon such writs or relating to the registration of voters, shall be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this Act into effect.

Writs, &c.,
to be made
conformable
to this act.

54. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the enactments for the time being in force relating to the representation of the people and with the Registration Acts; and in construing the provisions of the twenty-fourth and twenty-fifth sections of the Act of the second year of King William the Fourth, chapter forty-five, the expressions "the provisions hereinafter contained," and "as aforesaid," shall be deemed to refer to the provisions of this Act conferring rights to vote as well as to the provisions of the said Act.

This act, as
far as con-
sistent, to be
construed
with enact-
ments now
in force.

| | |
|----------------------------------|---|
| 30 & 31 Vict. c. 102. | 61. The following terms shall in this Act have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction; (that is to say,) |
| Interpreta- tion of terms. | "Month" shall mean calendar month: |
| "Month:" | "Member" shall include a knight of the shire: |
| "Member:" | "Election" shall mean an election of a member or members to serve in Parliament: |
| "Election:" | "County" shall not include a county of a city or county of a town, but shall mean any county, riding, parts or divisions of a county returning a member or members to serve in Parliament: |
| "County:" | "Borough" shall mean any borough, city, place, or combination of places, not being a county as hereinbefore defined, returning a member or members to serve in Parliament: |
| "Borough:" | "Dwelling House" shall include any part of a house occupied as a separate dwelling, and separately rated to the relief of the poor. |
| "Dwelling house:" | "The Registration Acts" shall mean the Act of the sixth year of the reign of Her present Majesty, chapter eighteen, and the Act of the twenty-eighth year of the reign of Her present Majesty, chapter thirty-six, and any other Acts or parts of Acts relating to the registration of persons entitled, to vote at and proceedings in the election of members to serve in Parliament for <i>England</i> and <i>Wales</i> . |
| "The Regis- tration Acts:" | |

SCHEDULE H.

Offices of Profit referred to in this Act.

Lord High Treasurer.

Commissioner for executing the offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.

President of the Privy Council.

Vice-President of the Committee of Council for Education.

Comptroller of Her Majesty's Household.

Treasurer of Her Majesty's Household.

Vice-Chamberlain of Her Majesty's Household.

Equerry or Groom in Waiting on Her Majesty.

Any Principal Secretary of State.

Chancellor and Under Treasurer of Her Majesty's Exchequer.

Paymaster General.

Postmaster General.

Lord High Admiral.

Commissioner for executing the office of Lord High Admiral.

Commissioner of Her Majesty's Works and Public Buildings,

THE REPRESENTATION OF THE PEOPLE ACT, 1867. xxi

President of the Committee of Privy Council for Trade and Plantations. 30 & 31 Viet.
c. 102.

Chief Secretary for Ireland.

Commissioner for administering the Laws for the Relief of the Poor in England.

Chancellor of the Duchy of Lancaster.

Judge Advocate General.

Attorney General for England.

Solicitor General for England.

Lord Advocate for Scotland.

Solicitor General for Scotland.

Attorney General for Ireland.

Solicitor General for Ireland.

PARLIAMENTARY ELECTIONS ACT, 1868.

31 & 32 Vict. c. 125.

An Act for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of Corrupt Practices at Parliamentary Elections. [31st July 1868.]

31 & 32 Vict.
c. 125.

WHEREAS it is expedient to amend the laws relating to election petitions, and to provide more effectually for the prevention of corrupt practices at parliamentary elections :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title
of act.

Definition
and juris-
diction of
court.

Interpreta-
tion of
terms :

" Metro-
politan
district :"

" Election :"

County :"

" Borough :"

1. This act may be cited for all purposes as "The Parliamentary Elections Act, 1868."

2. The expression "the court" shall, for the purposes of this act, in its application to England, mean the court of common pleas at Westminster, and in its application to Ireland the court of common pleas at Dublin, and such court shall, subject to the provisions of this act, have the same powers, jurisdiction and authority with reference to an election petition, and the proceedings thereon as it would have if such petition were an ordinary cause within their jurisdiction.

3. The following terms shall in this act have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction, (that is to say,)

"Metropolitan district" shall mean the city of London and the liberties thereof, and any parish or place subject to the jurisdiction of the metropolitan board of works :

"Election" shall mean an election of a member or members to serve in parliament :

"County" shall not include a county of a city or county of a town, but shall mean any county, riding, parts or division of a county returning a member or members to serve in parliament :

"Borough" shall mean any borough, university, city, place or combination of places, not being a county as hereinbefore defined, returning a member or members to serve in parliament :

- "Candidate" shall mean any person elected to serve in parliament at an election, and any person who has been nominated as or declared himself a candidate at an election: §1 & 32 Vict. c. 125.
- "Corrupt practices" or "corrupt practice" shall mean bribery, treating, and undue influence, or any of such offences, as defined by act of parliament, or recognized by the common law of parliament: "Corrupt practices:"
- "Rules of court" shall mean rules to be made as herein-after mentioned: "Rules of court:"
- "Prescribed" shall mean "prescribed by the rules of court." "Prescribed:"
4. For the purposes of this act "speaker" shall be deemed to include deputy speaker; and when the office of speaker is vacant, the clerk of the house of commons, or any other officer for the time being performing the duties of the clerk of the house of commons, shall be deemed to be substituted for and to be included in the expression "the speaker." Provisions as to speaker.

Presentation and Service of Petition.

5. From and after the next dissolution of parliament a petition complaining of an undue return or undue election of a member to serve in parliament for a county or borough may be presented to the court of common pleas at Westminster, if such county or borough is situate in England, or to the court of common pleas at Dublin, if such county or borough is situate in Ireland, by any one or more of the following persons: To whom and by whom election petition may be presented.
1. Some person who voted or who had a right to vote at the election to which the petition relates; or,
 2. Some person claiming to have had a right to be returned or elected at such election; or,
 3. Some person alleging himself to have been a candidate at such election:
- And such petition is hereinafter referred to as an election petition.
6. The following enactments shall be made with respect to the presentation of an election petition under this act:— Regulations as to presentation of election petition.
1. The petition shall be signed by the petitioner or all the petitioners if more than one:
 2. The petition shall be presented within twenty-one days after the return has been made to the clerk of the crown in chancery in England, or to the clerk of the crown and hanaper in Ireland, as the case may be, of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity,

PARLIAMENTARY ELECTIONS ACT, 1868.

31 & 32 Vict. c. 125.

An Act for amending the Laws relating to Election Petitions, and providing more effectually for the Prevention of Corrupt Practices at Parliamentary Elections. [31st July 1868.]

31 & 32 Vict. c. 125. WHEREAS it is expedient to amend the laws relating to election petitions, and to provide more effectually for the prevention of corrupt practices at parliamentary elections:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title of act.

1. This act may be cited for all purposes as "The Parliamentary Elections Act, 1868."

Definition and jurisdiction of court.

2. The expression "the court" shall, for the purposes of this act, in its application to England, mean the court of common pleas at Westminster, and in its application to Ireland the court of common pleas at Dublin, and such court shall, subject to the provisions of this act, have the same powers, jurisdiction and authority with reference to an election petition, and the proceedings thereon as it would have if such petition were an ordinary cause within their jurisdiction.

Interpretation of terms:

3. The following terms shall in this act have the meanings hereinafter assigned to them, unless there is something in the context repugnant to such construction, (that is to say,)

"Metropolitan district:"

"Metropolitan district" shall mean the city of London and the liberties thereof, and any parish or place subject to the jurisdiction of the metropolitan board of works:

"Election:"

"Election" shall mean an election of a member or members to serve in parliament:

County:"

"County" shall not include a county of a city or county of a town, but shall mean any county, riding, parts or division of a county returning a member or members to serve in parliament:

"Borough:"

"Borough" shall mean any borough, university, city, place or combination of places, not being a county as hereinbefore defined, returning a member or members to serve in parliament:

"Candidate" shall mean any person elected to serve in parliament at an election, and any person who has been nominated as or declared himself a candidate at an election: 31 & 32 Vict. c. 125.

"Corrupt practices" or "corrupt practice" shall mean bribery, treating, and undue influence, or any of such offences, as defined by act of parliament, or recognized by the common law of parliament: "Corrupt practices:"

"Rules of court" shall mean rules to be made as herein after mentioned: "Rules of court:"

"Prescribed" shall mean "prescribed by the rules of court." "Prescribed:"

4. For the purposes of this act "speaker" shall be deemed to include deputy speaker; and when the office of speaker is vacant, the clerk of the house of commons, or any other officer for the time being performing the duties of the clerk of the house of commons, shall be deemed to be substituted for and to be included in the expression "the speaker." Provisions as to speaker.

Presentation and Service of Petition.

5. From and after the next dissolution of parliament a petition complaining of an undue return or undue election of a member to serve in parliament for a county or borough may be presented to the court of common pleas at Westminster, if such county or borough is situate in England, or to the court of common pleas at Dublin, if such county or borough is situate in Ireland, by any one or more of the following persons: To whom and by whom election petition may be presented.

1. Some person who voted or who had a right to vote at the election to which the petition relates; or,
2. Some person claiming to have had a right to be returned or elected at such election; or,
3. Some person alleging himself to have been a candidate at such election:

And such petition is hereinafter referred to as an election petition.

6. The following enactments shall be made with respect to the presentation of an election petition under this act:— Regulations as to presentation of election petition.

1. The petition shall be signed by the petitioner or all the petitioners if more than one:
2. The petition shall be presented within twenty-one days after the return has been made to the clerk of the crown in chancery in England, or to the clerk of the crown and hanaper in Ireland, as the case may be, of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity,

31 & 32 Vict.
c.125.

since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment :

3. Presentation of a petition shall be made by delivering it to the prescribed officer or otherwise dealing with the same in manner prescribed :
4. At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the petitioner—
 - (a) To any person summoned as a witness on his behalf; or,
 - (b) To the member whose election or return is complained of (who is hereinafter referred to as the respondent),
 shall be given on behalf of the petitioner :
5. The security shall be to the amount of one thousand pounds; it shall be given either by recognizance to be entered into by any number of sureties not exceeding four, or by a deposit of money in manner prescribed, or partly in one way and partly in the other.

Copy of petition after presentation to be sent to returning officer.

Recognizance may be objected to.

7. On presentation of the petition the prescribed officer shall send a copy thereof to the returning officer of the county or borough to which the petition relates, who shall forthwith publish the same in the county or borough, as the case may be.

8. Notice of the presentation of a petition under this act, and of the nature of the proposed security, accompanied with a copy of the petition, shall, within the prescribed time, not exceeding five days after the presentation of the petition, be served by the petitioner on the respondent; and it shall be lawful for the respondent, where the security is given wholly or partially by recognizance, within a further prescribed time, not exceeding five days from the date of the service on him of the notice, to object in writing to such recognizance, on the ground that the sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

Determination of objection to recognizance.

9. Any objection made to the security given shall be heard and decided on in the prescribed manner. If an objection to the security is allowed it shall be lawful for the petitioner, within a further prescribed time, not exceeding five days, to remove such objection, by a deposit in the prescribed manner of such sum of money as may be deemed by the court or officer having cognizance of the matter to make the security sufficient.

If an objection made the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition; otherwise, on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue. 31 & 32 Vict. c. 125.

10. The prescribed officer shall, as soon as may be, make out a list of all petitions under this act presented to the court of which he is such officer, and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the election list, open to the inspection in the prescribed manner of any person making application. List of petitions at issue to be made.

Such petitions, as far as conveniently may be, shall be tried in the order in which they stand in such list.

Trial of a Petition.

11.* The following enactments shall be made with respect to the trial of election petitions under this act:— Mode of trial of election petitions.

1. The trial of every election petition shall be conducted before a puisne judge of one of her majesty's superior courts of common law at Westminster or Dublin, according as the same shall have been presented to the court at Westminster or Dublin, to be selected from a rota to be formed as hereinafter mentioned :
2. The members of each of the courts of queen's bench, common pleas and exchequer in England and Ireland shall respectively, on or before the third day of Michaelmas term in every year, select, by a majority of votes, one of the puisne judges of such court, not being a member of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year :
3. If in any case the members of the said court are equally divided in their choice of a puisne judge to be placed on the rota, the chief justice of such court (including under that expression the chief baron of the exchequer) shall have a second or casting vote :
4. Any judge placed on the rota shall be re-eligible in the succeeding or any subsequent year :
5. In the event of the death or the illness of any judge for the time being on the rota, or his inability to act for any reasonable cause, the court to which he belongs shall fill up the vacancy by placing on the rota another puisne judge of the same court :
6. The judges for the time being on the rota shall, accord-

* See now alterations of procedure made by 42 & 43 Vic. c. 75.

31 & 32 Vict.
c. 126.

ing to their seniority, respectively try the election petitions standing for trial under this Act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement :

7. When it appears to the judges on the rota, after due consideration of the list of petitions under this act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional judge or judges be appointed to assist the judges on the rota, each of the said courts (that is to say), the court of exchequer, the court of common pleas and court of queen's bench, in the order named, shall, on and according to the requisition of such judges on the rota, select, in manner hereinbefore provided, one of the puisne judges of the court to try election petitions for the ensuing year; and any judge so selected shall, during that year, be deemed to be on the rota for the trial of election petitions :
8. Her majesty may, in manner heretofore in use, appoint an additional puisne judge to each of the courts of queen's bench, the common pleas, and the exchequer in England :
9. Every election petition shall, except where it raises a question of law for the determination of the court, as hereinafter mentioned, be tried by one of the judges hereinbefore in that behalf mentioned, hereinafter referred to as the judge sitting in open court without a jury.
10. Notice of the time and place at which an election petition will be tried shall be given, not less than fourteen days before the day on which the trial is held, in the prescribed manner :
11. The trial of an election petition, in the case of a petition relating to a borough election, shall take place in the borough, and in the case of a petition relating to a county election, in the county : provided always, that if it shall appear to the court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the borough or county, it shall be lawful for the court to appoint such other place for the trial as shall appear most convenient : provided also, that in the case of a petition relating to any of the boroughs within the metropolitan district, the petition may be heard at such place within the district as the court may appoint :
12. The judge presiding at the trial may adjourn the same from time to time, and from any one place to any other place within the county or borough, as to him may seem expedient :

13. At the conclusion of the trial the judge who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the speaker, and upon such certificate being given such determination shall be final to all intents and purposes: 21 & 32 Vic c. 126.
14. Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall, in addition to such certificate, and at the same time, report in writing to the speaker as follows:
 - (a) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice:
 - (b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice:
 - (c) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates:
15. The judge may at the same time make a special report to the speaker as to any matters arising in the course of the trial an account of which in his judgment ought to be submitted to the house of commons:
16. Where, upon the application of any party to a petition made in the prescribed manner to the court, it appears to the court that the case raised by the petition can be conveniently stated as a special case, the court may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the court, and the decision of the court shall be final; and the court shall certify to the speaker its determination in reference to such special case.
12. Provided always, that if it shall appear to the judge on the trial of the said petition that any question or questions of law as to the admissibility of evidence or otherwise require further consideration by the court of common pleas, then it shall be lawful for the said judge to postpone the granting of the said certificate until the determination of such question or questions by the court, and for this purpose to reserve any such question or questions in like manner as questions are usually reserved by a judge on a trial at nisi prius. Application to the court respecting trials.
13. The house of commons, on being informed by the speaker of such certificate and report or reports, if any, shall

House of commons t

31 & 32 Vict.
c. 125.

carry out
report.

House of
commons
may make
order on spe-
cial report.

Report of
the judge
as to cor-
rupt prac-
tices.

Report of
judge equi-
valent to
report of
election
committee.

Evidence of
corrupt
practices
how
received.

Acceptance
of office not
to stop
petition.

Prorogation
of parlia-
ment.

Form of
petition.
Service of
petition.

order the same to be entered in their journals, and shall give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying the determination into execution, as circumstances may require.

14. Where the judge makes a special report the house of commons may make such order in respect of such special report as they think proper.

15. If the judge states in his report on the trial of an election petition under this act that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county or borough at the election to which the petition relates, such statement shall for all the purposes of the act of the session of the fifteenth and sixteenth years of the reign of her present majesty, chapter fifty-seven, intituled "An Act to provide for more effectual Inquiry into the existence of Corrupt Practices at Elections of Members to serve in Parliament," have the same effect and may be dealt with in the same manner as if it were a report of a committee of the house of commons appointed to try an election petition, and the expenses of any commission of inquiry which may be issued in accordance with the provisions of the said act shall be defrayed as if they were expenses incurred in the registration of voters for such county or borough.

16. The report of the judge in respect of persons guilty of corrupt practices shall for the purpose of the prosecution of such persons, in pursuance of section nine of the act of the twenty-sixth year of the reign of her present majesty, chapter twenty-nine, have the same effect as the report of the election committee therein mentioned, that certain persons have been guilty of bribery and treating.

17. On the trial of an election petition under this act, unless the judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

18. The trial of an election petition under this act shall be proceeded with notwithstanding the acceptance by the respondent of an office of profit under the crown.

19. The trial of an election petition under this act shall be proceeded with notwithstanding the prorogation of parliament (a).

Proceedings.

20. An election petition under this act shall be in such form and state such matters as may be prescribed.

21. An election petition under this act shall be served as nearly as may be in the manner in which a writ or summons is served, or in such other manner as may be prescribed.

(a) A dissolution abates a petition—per Bramwell, B.

22. Two or more candidates may be made respondents to the same petition, and their case may for the sake of convenience be tried at the same time, but for all the purposes of this act such petition shall be deemed to be a separate petition against each respondent. 31 & 32 Vict. c. 125. Joint respondents to petition.

23. Where, under this act, more petitions than one are presented relating to the same election or return, all such petitions shall in the election list be bracketed together, and shall be dealt with as one petition, but such petitions shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented, unless the court shall otherwise direct. Provision in cases where more than one petition is presented.

24. On the trial of an election petition under this act the shorthand writer of the house of commons or his deputy shall attend and shall be sworn by the judge faithfully and truly to take down the evidence given at the trial, and from time to time as occasion requires to write or cause the same to be written in words at length; and it shall be the duty of such shorthand writer to take down such evidence, and from time to time to write or cause the same to be written at length, and a copy of such evidence shall accompany the certificate made by the judge to the speaker; and the expenses of the shorthand writer shall be deemed to be part of the expenses incurred in receiving the judge. Shorthand writer to attend trial of election petition.

Jurisdiction and Rules of Court.

25. The judges for the time being on the rota for the trial of election petitions in England and Ireland may respectively from time to time make, and may from time to time revoke and alter, general rules and orders (in this act referred to as the rules of court) for the effectual execution of this act, and of the intention and object thereof, and the regulation of the practice, procedure and costs of election petitions and the trial thereof, and the certifying and reporting thereon. Rules to be made by court.

Any general rules and orders made as aforesaid shall be deemed to be within the powers conferred by this act, and shall be of the same force as if they were enacted in the body of this act.

Any general rules and orders made in pursuance of this section shall be laid before parliament within three weeks after they are made, if parliament be then sitting, and if parliament be not then sitting, within three weeks after the beginning of the then next session of parliament.

26. Until rules of court have been made in pursuance of this act, and so far as such rules do not extend, the principles, practice and rules on which committees of the house of commons have heretofore acted in dealing with election petitions shall be observed so far as may be by the court and judge in the case of election petitions under this act. Practice of house of commons to be observed.

31 & 32 Vict.
c. 126.

Performance
of duties by
prescribed
officer.

27. The duties to be performed by the 'prescribed officer under this act shall be performed by such one or more of the masters of the court of common pleas at Westminster as may be determined by the chief justice of the said court of common pleas, and by the master of the court of common pleas at Dublin, and there shall be awarded to such masters respectively in addition to their existing salaries such remuneration for the performance of the duties imposed on them in pursuance of this act as the chief justices of the said courts of common pleas at Westminster and Dublin may respectively, with the consent of the commissioners of the treasury, determine.

Reception, Expenses and Jurisdiction of Judge.

Reception of
judge.

28. The judge shall be received at the place where he is about to try an election petition under this act with the same state, so far as circumstances admit, as a judge of assize is received at an assize town; he shall be received by the sheriff in the case of a petition relating to a county election, and in any other case by the mayor, in the case of a borough having a mayor, and in the case of a borough not having a mayor by the sheriff of the county in which the borough is situate, or by some person named by such sheriff.

The travelling and other expenses of the judge, and all expenses properly incurred by the sheriff or by such mayor or person named as aforesaid in receiving the judge and providing him with necessary accommodation and with a proper court, shall be defrayed by the commissioners of the treasury out of money to be provided by parliament.

Power of
judge.

29. On the trial of an election petition under this act the judge shall, subject to the provisions of this act, have the same powers, jurisdiction and authority as a judge of one of the superior courts and as a judge of assize and nisi prius, and the court held by him shall be a court of record.

Attendance
on judge.

30. The judge shall be attended on the trial of an election petition under this act in the same manner as if he were a judge sitting at nisi prius, and the expenses of such attendance shall be deemed to be part of the expenses of providing a court.

Witnesses.

Summons of
witnesses.

31. Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial at nisi prius, and shall be subject to the same penalties for perjury.

Judge may
summon and
examine
witnesses.

32. On the trial of an election petition under this act the judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt

of court. The judge may examine any witness so compelled to attend or any person in court although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by a judge such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them. 31 & 32 Vic c. 125.

33. The provisions of the seventh section of the act of the session of the twenty-sixth and twenty-seventh years of the reign of her present majesty, chapter twenty-nine, relating to the examination and indemnity of witnesses, shall apply to any witness appearing before a judge on the trial of an election petition under this act, in the same manner as in the case of a trial before a committee of the house of commons before the passing of this act, and the certificate shall be given under the hand of the judge. Indemnity to witness

34. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this act, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to such person by a certificate under the hand of the judge or of the prescribed officer, and such expenses, if the witness was called and examined by the judge, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed to be costs of the petition. Expenses of witnesses.

Withdrawal and abatement of Election Petitions.

35. An election petition under this act shall not be withdrawn without the leave of the court or judge upon special application, to be made in and at the prescribed manner, time and place. Withdrawal of petition and substitution of new petitioners.

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the county or borough to which the petition relates of the intention of the petitioner to make an application for the withdrawal of his petition.

On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

The court or judge may, if it or he thinks fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is in the opinion of the court or judge induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

31 & 32 Vict.
c. 125.

If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution.

Subject as aforesaid a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities as the original petitioner.

If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

Court to
report to the
speaker cir-
cumstances
of with-
drawal.

36. In every case of the withdrawal of an election petition under this act the court or judge shall report to the speaker whether in its or his opinion the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and if so the circumstances attending the withdrawal.

Abatement
of petition.

37. An election petition under this act shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge, in and at the prescribed manner, time and place to be substituted as a petitioner.

The court or judge may, if it or he thinks fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition.

Admission
in certain
cases of
voters to be
respondents.

38. If before the trial of any election petition under this act any of the following events happen in case of the respondent (that is to say)—

- (1.) If he dies;
- (2.) If he is summoned to Parliament as a peer of Great Britain by a writ issued under the Great Seal of Great Britain;
- (3.) If the house of commons have resolved that his seat is vacant;
- (4.) If he gives in and at the prescribed manner and time notice to the court that he does not intend to oppose the petition;

notice of such event having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondent; and any number of persons not exceeding three may be so admitted.

31 & 32 Vict.
c. 125.

39. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the house of commons until the house of commons has been informed of the report on the petition; and the court or judge shall in all cases in which such notice has been given in the prescribed time and manner report the same to the speaker of the house of commons.

Respondent
not opposing
not to ap-
pear as party
or to sit.

40. Where an election petition under this act complains of a double return and the respondent has given notice to the prescribed officer that it is not his intention to oppose the petition, and no party has been admitted in pursuance of this act to defend such return, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition by notice addressed to the prescribed officer, and upon the receipt of such notice the prescribed officer shall report the fact of the withdrawal of such petition to the speaker, and the house of commons shall thereupon give the necessary directions for amending the said double return by taking off the file the indenture by which the respondent so declining to oppose the petition was returned, or otherwise as the case may require: *provided always, that this section shall not apply to Ireland.**

Provisions
for cases of
double
return where
the member
complained

of declines
to defend
his return.

Costs.

41. All costs, charges and expenses of and incidental to the presentation of a petition under this act, and to the proceedings consequent thereupon, with the exception of such costs, charges and expenses as are by this act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court or judge may determine, regard being had to the disallowance of any costs, charges or expenses which may, in the opinion of the court or judge, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the

General
costs of
petition.

* Repealed by Ballot Act, 1872.

21 & 22 Vict.
c 126. respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or not on the whole successful.

The costs may be taxed in the prescribed manner but according to the same principles as costs between attorney and client are taxed in a suit in the high court of chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed.

Recogni-
zance, when
to be es-
treated, &c.

42. If any petitioner in an election petition presented under this act neglect or refuse for the space of six months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges and expenses, and if such neglect or refusal be, within one year after such demand, proved to the satisfaction of the court of elections, in every such case every person who has entered into a recognizance relating to such petition under the provisions of this act shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited, and the same shall be dealt with in England in manner provided by the act of the third year of the reign of king George the fourth, chapter forty-six, and in Ireland in manner provided by "The Fines Act (Ireland), 1851."

Punishment of Corrupt Practices.

Punishment
of candidate
guilty of
bribery.

43. Where it is found by the report of the judge upon an election petition under this act, that bribery has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the house of commons during the seven years next after the date of his being found guilty; and he shall further be incapable during the said period of seven years—

- (1.) Of being registered as a voter and voting at any election in the united kingdom; and,
- (2.) Of holding any office under the act of the session of the fifth and sixth years of the reign of his majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of her present majesty, chapter one hundred and eight, or any municipal office; and,
- (3.) Of holding any judicial office, and of being appointed and of acting as a justice of the peace.

Penalty for

44. If on the trial of any election petition under this act

any candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent for the management of the election, any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by a committee of the house of commons, or by the report of the judge upon an election petition under this act, or by the report of commissioners appointed in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of her present majesty, chapter fifty-seven, the election of such candidate shall be void.

45. Any person, other than a candidate, found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall, during the seven years next after the time at which he is so found guilty, be incapable of being elected to and sitting in parliament; and also be incapable—

- (1.) Of being registered as a voter and voting at any election in the united kingdom; and,
- (2.) Of holding any office under the act of the session of the fifth and sixth years of the reign of his majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of her present majesty, chapter one hundred and eight, or any municipal office; and,
- (3.) Of holding any judicial office, and of being appointed and of acting as a justice of the peace.

46. For the purpose of disqualifying, in pursuance of the thirty-six section of "The Corrupt Practices Prevention Act, 1854," a member guilty of corrupt practices, other than personal bribery within the forty-third section of this act, the report of the judge on the trial of an election petition shall be deemed to be substituted for the declaration of an election committee, and the said section shall be construed as if the words "reported by a judge on the trial of an election petition" were inserted therein in the place of the words "declared by an election committee."

47. If at any time after any person has become disqualified by virtue of this act, the witnesses or any of them, on whose testimony such person shall have so become disqualified, shall, upon the prosecution of such person, be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to order, and the court shall upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall henceforth cease and determine, and the same shall cease and determine accordingly.

c. 125.
employing
corrupt
agent.

Disquali-
cation of
persons
found
guilty of
bribery.

Amendment
of the law
relating to
the disquali-
fication of
candidates
for corrupt
practices.

Removal of
disqualifica-
tion on
proof that
disqualifica-
tion was pro-
cured by
perjury.

31 & 32 Vict.
c. 125.

Returning
officer may
be sued for
neglecting
to return
any person
duly
elected.

Calculation
of time.

Contro-
verted
elections to
be tried
under act.

Returning
officer if
complained
of to be
respondent.

Petition
complaining
of no return.

Recrimina-
tion when
petition for
undue re-
turn.

Repeal of
acts.

Miscellaneous.

48. If any returning officer wilfully delays, neglects, or refuses duly to return any person who ought to be returned to serve in parliament for any county or borough, such person may, in case it has been determined on the hearing of an election petition under this act that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected or refused duly to make such return at his election in any of her majesty's courts of record at Westminster, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit, provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial relating to such election.

49. In reckoning time for the purposes of this act, Sunday, Christmas-day, Good Friday and any day set apart for a public fast or public thanksgiving shall be excluded.

50. From and after the next dissolution of parliament no election or return to parliament shall be questioned except in accordance with the provisions of this act [but until such dissolution, elections and returns to parliament may be questioned in manner heretofore in use].*

51. Where an election petition under this act complains of the conduct of a returning officer, such returning officer shall for all the purposes of this act, except the admission of respondents in his place, be deemed to be a respondent.

52. A petition under this act complaining of no return may be presented to the court, and shall be deemed to be an election petition within the meaning of this act, and the court may make such order thereon as they think expedient for compelling a return to be made, or may allow such petition to be heard by the judge in manner hereinbefore provided with respect to ordinary election petitions.

53. On the trial of a petition under this act complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.

54. From and after the next dissolution of parliament the acts contained in the schedule hereto are repealed so far as relates to elections and petitions to the extent therein mentioned [provided that such repeal shall not affect the validity or invalidity of anything already done or suffered, or any offence already committed, or any remedy or proceeding in respect thereof, or the proof of any past act or thing].*

* The words in brackets were repealed by 38 & 39 Vict. c. 66.

55. The additional puisne judges appointed under this act to each of the courts of queen's bench, the common pleas and the exchequer in England shall, as to rank, salary, pension, attendant officers, jurisdiction and all other privileges and duties of a judge, stand in the same position as the other puisne judges of the court to which he is attached.

31 & 32 Vict.
c. 125.

Provision as to payment of additional judges and remuneration of judges for duties to be performed under this act.

Any puisne judge of the said courts appointed in pursuance of or after the passing of this act shall be authorized to sit, and shall, when requested by the lord chancellor, sit as judge of the court of probate and court of marriage and divorce or of the admiralty court.

Commissioners of inquiry into corrupt practices.

56. If upon a petition to the house of commons, presented within twenty-one days after the return to the clerk of the crown in chancery in England, or to the clerk of the crown and hanaper in Ireland, of a member to serve in parliament for any borough or county, or within fourteen days after the meeting of parliament, and signed by two or more electors of such borough or county, and alleging that corrupt practices have extensively prevailed at the then last election for such borough or county, or that there is reason to believe that corrupt practices have there so prevailed, an address be presented by both houses of Parliament, praying that such allegation may be inquired into, the crown may appoint commissioners to inquire into the same, and if such commissioners in such case be appointed, they shall inquire in the same manner and with the same powers and subject to all the provisions of the statute of the fifteenth and sixteenth of Victoria, chapter fifty-seven.

57. Any person who at the time of the passing of this act was entitled to practise as agent, according to the principles, practice and rules of the house of commons in cases of election petitions and matters relating to election of members of the house of commons, shall be entitled to practise as an attorney or agent in cases of election petitions and all matters relating to elections before the court and judges prescribed by this act: provided, that every such person so practising as aforesaid shall, in respect of such practice and everything relating thereto, be subject to the jurisdiction and orders of the court as if he were an attorney of the said court: and further, provided, that no such person shall practise as aforesaid until his name shall have been entered on a roll to be made and kept, and which is hereby authorised to be made and kept, by the prescribed officer in the prescribed manner.

Rules as to agents practising in cases of election petitions.

58. The provisions of this act shall apply to Scotland, subject to the following modifications:

Application of act to Scotland.

1. The expression "the court" shall mean either division of the inner house of the court of session, and either of such divisions shall have the same powers, jurisdiction and authority with reference to an election

31 & 32 Vict.
c. 125.

- petition in Scotland, and the proceedings thereon, which by this act are conferred on the court of common pleas at Westminster with respect to election petitions in England.
2. The expression "county" shall not include a county of a city, but shall mean any county or division of a county or any combination of counties, or of counties and portions of counties, returning a member to serve in parliament :
 3. The expression "borough" shall mean any university or universities, or any city, town, burgh or district of cities, towns, or burghs, returning a member or members to serve in parliament :
 4. "Recognizance" shall mean a bond of caution with usual and necessary clauses :
 5. The trial of every election petition in Scotland shall be conducted before a judge of the court of session, to be selected from a rota to be formed as hereinafter mentioned :
 6. The judges of the court of session shall, on or before the first day of the winter session in every year, select, by a majority of votes, two of the judges of such court, not being members of the house of lords, to be placed on the rota for the trial of election petitions during the ensuing year :
 7. If in any case the judges of the said court are equally divided in their choice of a judge to be placed on the rota, the lord president shall have a second or casting vote :
 8. Any judge placed on the rota shall be re-eligible in the succeeding or any subsequent year :
 9. In the event of the death or illness of any judge for the time being on the rota, or his inability to act for any reasonable cause, the judges shall fill up the vacancy by placing on the rota another judge :
 10. The judges for the time being on the rota shall, according to their seniority, respectively try the election petitions standing for trial under this act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement :
 11. Where it appears to the judges on the rota, after due consideration of the list of petitions under this act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional judge or judges be appointed to assist the judges on the rota, the judges of the court of session shall, on and according to the requisition of such judges on the rota, select in manner hereinbefore pro-

vided, a judge to try election petitions for the ensuing year; and any judge so selected shall during that year be deemed to be on the rota for the trial of election petitions: 31 & 32 Vict. c. 125.

12. The duties to be performed by the prescribed officer under this act with reference to election petitions in Scotland shall be performed by such one or more of the principal clerks of session as may be determined by the lord president of the court of session; and there shall be awarded to such principal clerk or clerks, in addition to their existing salaries, such remuneration for the performance of the duties imposed on them in pursuance of this act as the said lord president may, with the consent of the commissioners of the treasury, determine:
13. The judge shall be received at the place where he is about to try an election petition under this act in the same manner and by the same authorities, as far as circumstances admit, as a judge of the court of justice is received at a circuit town, and he shall be attended by such officer or officers as shall be necessary.
14. The travelling and other expenses of the judge, and of the officer or officers in attendance upon him, and all expenses properly incurred in providing the judge with a proper court, shall be defrayed by the commissioners of the treasury out of money to be provided by Parliament:
15. On the trial of an election petition under this act, the judge shall, subject to the provisions of this act, 11 & 12 Vict. the same powers, jurisdictions and authority as a judge of the court of session presiding at the trial of a civil cause without a jury:
16. The principles of taxation of costs as between attorney and client in a suit of the high court of chancery shall in Scotland mean the principles of taxation of expenses as between agent and client in the court of session:
17. Any of her majesty's courts of record at Westminster shall in Scotland mean the court of session in Scotland:
18. In lieu of the provisions for the estreating of a recognizance under an election petition, the prescribed officer shall, when otherwise competent under the provisions of this act, certify that the conditions contained in the bond of caution have not been fulfilled, and it shall then be competent for the party or parties interested to register the said bond, and do diligence upon it as accords of law.

31 & 32 Vict c. 126. **59.** This act shall be in force until the expiration of three years from the passing of such act, and to the end of the then next session of parliament.
 Duration of Act.

SCHEDULE.

| Date of Act | Title of Act | Extent of Repeal |
|---------------------|---|------------------|
| 4 & 5 Vict. c. 57 . | An Act for the prevention of Bribery at Elections | The whole Act. |
| 5 & 6 Vict. c. 102 | An Act for the better Discovery and Prevention of Bribery and Treating at the Election of Members of Parliament | The whole Act. |
| 11 & 12 Vict. c. 98 | An Act to amend the Law for the Trial of Election Petitions | The whole Act |
| 26 Vict. c. 29 . | An Act to amend and continue the Law relating to Corrupt Practices at Elections of Members of Parliament | Section 8. |
| 28 Vict. c. 8 . . | An Act to amend "The Election Petitions Act, 1848," in certain Particulars | The whole Act. |

THE BALLOT ACT 1872

35 & 36 VICTORIA.

CHAPTER 33.

An act to amend the Law relating to Procedure at ^{35 & 36 Vict}
Parliamentary and Municipal Elections. [18th ^{c. 33}
July 1872.]

WHEREAS it is expedient to amend the law relating to procedure at parliamentary and municipal elections :—

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

PART I.

PARLIAMENTARY ELECTIONS.

Procedure at Election.

1. A candidate for election to serve in parliament for a county or borough shall be nominated in writing. The writing shall be subscribed by two registered electors of such county or borough as proposer and seconder, and by eight other registered electors of the same county or borough as assenting to the nomination, and shall be delivered during the time appointed for the election to the returning officer by the candidate himself, or his proposer or seconder.

Nomination
of candidate
for parliament
elections.

If at the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer shall forthwith declare the candidates who may stand nominated to be elected, and return their names to the clerk of the crown in chancery; but if at the expiration of such hour more candidates stand nominated than there are vacancies to be filled up, the returning officer shall adjourn the election and shall take a poll in manner in this act mentioned.

A candidate may, during the time appointed for the election, but not afterwards, withdraw from his candidature by giving a notice to that effect, signed by him, to the returning officer: Provided that, the proposer of a candidate nominated in his absence out of the united kingdom may withdraw such candidate by a written notice signed by him and delivered to the

35 & 36 Vict.
c. 33.

returning officer, together with a written declaration of such absence of the candidate.

If after the adjournment of an election by the returning officer for the purpose of taking a poll one of the candidates nominated shall die before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.

Poll at
elections.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the clerk of the crown in chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates

to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer. 35 & 36 Vict. c. 33.

Offences at Elections.

3. Every person who,—

1. Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged ; or
 2. Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper ; or
 3. Without due authority supplies any ballot paper to any person ; or
 4. Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in ; or
 5. Fraudulently takes out of the polling station any ballot paper ; or
 6. Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election ;
- shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Offences in respect of nomination papers, ballot papers, and ballot boxes.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no officer, clerk, or agent, and no person whatsoever, shall interfere with or attempt to interfere with a voter when

Infringement of secrecy.

35 & 36 Vict.
c. 33.

marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Amendment of Law.

Division of
counties and
boroughs
into polling
districts.

5. The local authority (as hereinafter defined) of every county shall by order, as soon as may be practicable after the passing of this act, divide such county into polling districts, and assign a polling place to each district, in such manner that so far as is reasonably practicable, every elector resident in the county shall have a polling place within a distance not exceeding four miles from his residence, so, nevertheless, that a polling district need not in any case be constituted containing less than one hundred registered electors.

The local authority (as hereinafter defined) of every borough shall take into consideration the division of such borough into polling districts, and, if they think it desirable, by order, divide such borough into polling districts in such manner as they may think most convenient for taking the votes of the electors at a poll.

The local authority of every county and borough shall, on or before the first day of May one thousand eight hundred and seventy-three, send to one of her majesty's principal secretaries of state, to be laid by him before both houses of parliament, a copy of any order made by such authority in pursuance of this section, and a report, in such form as he may require, stating how far the provisions of this act with respect to polling districts have been complied with in their county or borough; and if they make any order after the first day of May one thousand eight hundred and seventy-three, with respect to polling districts or polling places in their county or borough,

they shall send a copy of such order to the said secretary of state, to be laid by him before both houses of parliament. 35 & 36 Vict
c. 33.

The local authority of a county or borough in this section means the authority having power to divide such county or borough into polling districts under section thirty-four of the Representation of the People Act, 1867, and any enactments amending that section; and such authority shall exercise the powers thereby given to them for the purposes of this section; and the provisions of the said section as to the local authority of a borough constituted by the combination of two or more municipal boroughs shall apply to a borough constituted by the combination of a municipal borough and other places, whether municipal boroughs or not; and in the case of a borough of which a town council is not the local authority, and which is not wholly situate within one petty sessional division, the justices of the peace for the county in which such borough or the larger part thereof in area is situate, assembled at some court of general or quarter sessions, or at some adjournment thereof, shall be the local authority thereof and shall for this purpose have jurisdiction over the whole of such borough; and in the case of such borough and of a county, a court of general sessions shall be assembled within twenty-one days after the passing of this act, and any such court may be assembled and adjourned from time to time for the purpose.

No election shall be questioned by reason of any non-compliance with this section or any informality relative to polling districts or polling places, and any order made by a local authority in relation to polling districts or polling places shall apply only to lists of voters made subsequently to its date, and to registers of voters formed out of such lists, and to elections held after the time at which a register of voters so formed has come into force; provided that where any such order is made between the first day of July and the first day of November in any year, and does not create any new division between two or more polling districts of any parish for which a separate poor rate is or can be made, such order shall apply to the register of voters which comes into force next after such order is made, and to elections held after that register so comes into force; and the clerk of the peace or town clerk, as the case may be, shall copy, print, and arrange the list of voters for the purpose of such register in accordance with such order.

6. The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any

Use of school
and public
room for
poll.

35 & 36 Vict.
c. 33.

expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

Conclusive-
ness of
register of
voters.

7. At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote: provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of parliament, or relieve such person from any penalties to which he may be liable for voting.

Duties of Returning and Election Officers.

General
powers and
duties of
returning
officer.

8. Subject to the provisions of this act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this act.

All expenses properly incurred by any returning officer in carrying into effect the provisions of this act, in the case of any parliamentary election, shall be payable in the same manner as expenses incurred in the erection of polling booths at such election are by law payable.

Where the sheriff is returning officer for more than one county as defined for the purposes of parliamentary elections, he may, without prejudice to any other power, by writing under his hand, appoint a fit person to be his deputy for all or any of the purposes relating to an election in any such county, and may, by himself or such deputy, exercise any powers and do any things which the returning officer is authorised or required to exercise or do in relation to such election. Every such deputy, and also any under sheriff, shall, in so far as he acts as returning officer, be deemed to be included in the term returning officer in the provisions of this act relating to parliamentary elections, and the enactments with which this part of this act is to be construed as one.

Keeping of
order in
station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the

returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day. 35 & 36 Vict. c. 33.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before the justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this act to be taken before him. Powers of presiding officer and administration of oaths, &c.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission, a penal sum not exceeding one hundred pounds. Liability of officers for misconduct.

Section fifty of the Representation of the People Act, 1867, (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate,) shall apply to any returning officer or officer appointed by him in pursuance of this act, and to his partner or clerk. 30 and 31 Vict. c. 102.

Miscellaneous.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted. Prohibition of disclosure of vote.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the first schedule to this act, or any mistake in the use of forms in the second schedule to this act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this act, and that such non-compliance or mistake did not affect the result of the election. Non-compliance with rules.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments pro- Use of municipal ballot boxes, &c. for parlia-

35 & 36 Vict.
c. 33
mentary
election, and
vice versa.

vided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

Construction
of act.

15. This part of this act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in parliament, and with any enactments otherwise relating to the subject matter of this part of this act, and terms used in this part of this act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments, shall be deemed to include a public notice given in pursuance of this act.

Application of Part of Act to Scotland.

Alterations
for applica-
tion of Part
I. to
Scotland.

16. This part of this act shall apply to Scotland, subject to the following provisions:—

1. The expression "crime and offence" shall be equivalent to the expression "misdemeanor," and shall be substituted therefor:
2. All offences under this act for which any person may be punished on summary conviction shall be prosecuted before the sheriff under the provisions of The Summary Procedure Act, 1864; and all jurisdictions, powers, and authorities necessary for that purpose are hereby conferred on sheriffs:
3. The expression "sheriff" shall include sheriff substitute:
4. The provisions of this act relating to the division of counties and boroughs into polling districts shall not apply to Scotland:
5. The ballot boxes, ballot papers, stamping instruments,

and other requisites for a parliamentary election shall be provided and paid for in the same manner as polling rooms or booth under the fortieth section of the act of the second and third years of the reign of King William the Fourth, chapter sixty-five, intituled "An Act to amend the Representation of the People in Scotland;" and the reasonable remuneration of presiding officers, assistants, and clerks employed by the returning officer at such an election, and all other expenses properly incurred by the returning officer, and by sheriff clerks and town clerks, in carrying into effect the provisions of this act, shall be paid by the candidates: provided always, that if any person shall be proposed as a candidate without his consent the person so proposing him shall be liable to defray his share of all those expenses in like manner as if he had been a candidate himself; provided also, that the fee to be paid to each presiding officer shall in no case exceed the sum of three guineas per day, and the fee to be paid to each assistant to the returning officer shall not exceed two guineas per day, and the fee to be paid to each clerk shall not exceed one guinea per day.

Application of Part of Act to Ireland.

17. This part of this act shall apply to Ireland, subject to the following modifications:—

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1. The expression "Clerk of the Crown in Chancery" shall mean the Clerk of the Crown and Hanaper in Ireland:

2. The preceding provisions of this part of this act with respect to the division of counties and boroughs into polling districts shall not extend to Ireland:

3. In the construction of the preceding provisions of this part of this act as applying to Ireland, section thirteen of "The Representation of the People (Ireland) Act, 1868," shall be substituted for section fifty of "The Representation of the People Act, 1867," wherever in such provisions the said last-mentioned section occurs. The provision contained in the sixth section of this act providing for the use of schoolrooms free of charge, for the purpose of taking the poll at elections, shall not apply to any school adjoining or adjacent to any church or other place of worship, nor to any school connected with a nunnery or other religious establishment:

4. No returning officer shall be entitled to claim or be paid any sum or sums of money for the erection of polling booths or stations and compartments other than the sum or sums actually and necessarily incurred and paid by him in reference to the same, any statute or statutes

35 & 36 Vict.
c. 33.

to the contrary now in force notwithstanding, nor shall the expenses of providing sufficient polling stations or booths and compartments at every polling place exceed the sums or sums now given and allowed by statute in Ireland.

18. With respects to polling districts and polling places in Ireland, the following regulations shall have effect; that is to

say,

Provisions as
to polling
districts and
polling
places in
Ireland.

1. The lord lieutenant, by and with the advice of the privy council in Ireland, shall appoint special sessions to be held by the chairman of quarter sessions and justices of the peace having jurisdiction in each county or riding of a county in Ireland, at such places and times before the first day of November next after the passing of this as shall seem fit for the purpose of dividing such county or riding into polling districts and appointing polling places for such districts.
2. The clerk of the said privy council shall cause each such appointment to be notified to the clerk of the peace of the county to which the same relates, and shall cause notice of the same to be published twice in each of two consecutive weeks in one or more newspapers usually circulated in such county, and once in the "Dublin Gazette."
3. The clerk of the peace of each county in Ireland shall, within five days after the receipt of such notification as aforesaid, send a written or printed notice of the same to the chairman and to every justice of the peace having jurisdiction within the county or riding to which the same relates.
4. The chairman of quarter sessions and the justices of the peace having jurisdiction in any county or riding assembled at such special sessions appointed in manner aforesaid, or at any adjournment of the same before the first day of December next after the passing of this act, shall make an order dividing such county or riding of a county into polling districts, and appointing in each such polling district a place (in this section referred to as a "polling place") for taking the poll at contested elections of members to serve in parliament for such county:
5. Every such division shall be made in such manner so that as far as practicable, every building or place in such county in which petty sessions are at the time of the passing of this act held shall be a polling place: Provided always, that where it appears to the chairman and justices assembled at special sessions that for the purpose of affording full facilities for taking the poll at contested elections, there should be polling places in

THE BALLOT ACT, 1872.

addition to such buildings or places where petty sessions 35 & 36 Vic are held as aforesaid, they shall appoint so many c. 33. polling places in addition to such buildings or places as they may think necessary, and constitute a polling district for each such polling place :

6. Every such order shall specify the barony or baronies, half barony or half baronies, townland or townlands, parish or parishes, and places constituting each such polling district :
7. A copy of every such order shall forthwith be sent by the clerk of the peace for such county to the clerk of the said privy council, who thereupon shall submit the same for confirmation by the lord lieutenant and privy council in Ireland, in the manner by this act provided, and such order shall not be of any validity until the same has been so confirmed :
8. Notice of the intended confirmation of any such order shall be given by the clerk of the said privy council at least one month before the day fixed for such confirmation by the publication of such notice and order in one or more newspapers circulating within such county or riding to which the order has reference :
9. It shall be lawful for the lord lieutenant and privy council, on the day fixed for the intended confirmation of any such order, to confirm the same as it stands, or with such variation, alteration, and modification as may seem fit : Provided always, that where any person is dissatisfied with any such order it shall be lawful for such person, within fourteen days after the publication of the notice of the intended confirmation of such order, to appeal against the same, and such appeal shall be in writing, stating the grounds thereof, and shall be signed by such person, and shall within such time be lodged with the clerk of the privy council ; and it shall be lawful for the lord lieutenant and privy council, previous to the confirmation of any such order, to hear and determine such appeal against the same, and to make such order as to the costs of such appeal as may seem meet :
10. When any such order has been confirmed as aforesaid, the clerk of the said privy council shall transmit a copy of the same to the clerk of the peace of the county to which the same relates, and shall cause the same to be published once in the "Dublin Gazette," and once in the newspaper in which the notice of the intended confirmation was published :
11. The provisions of the act of the session of the twenty-seventh and twenty-eighth years of the reign of her

15 & 36 Vict.
i. 33.

present majesty, chapter twenty-two, for ascertaining the voters in the new or altered polling districts referred to in the ninth section of the said act, and for making separate lists of voters, and otherwise in relation thereto, shall extend and apply to every case in which any order in relation to any county has been confirmed under the authority of this section, in like manner as if such sections were herein re-enacted, and the polling districts to which the same refer or apply had been polling districts constituted under the authority of this section; and the register of voters in force in such county at the time of confirming such order as amended by the printed books, given into the custody of the sheriff of such county in manner by the said act provided, and the said printed books, shall be the register of persons entitled to vote at any election of a member or members to serve in parliament which shall take place in and for such county until the first day of January next after the giving of the said books as aforesaid: Provided always, that in the construction of the said provisions, the terms "the passing of this act" and the "said act" shall respectively be construed to mean the confirming of any order made under the authority of this section and this act:

12. At any election of a member or members to serve in parliament for any county to which any such order relates held after the confirming of any such order, and before the register of voters to be formed subsequently to the date of the confirming of such order under the provisions of this section shall be in force, the poll shall be taken as if no such order had been made:
13. All precepts, notices, and forms relating to the registration of voters shall be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this act into effect:
14. When the chairman of quarter sessions and justices of the peace having jurisdiction in any county or riding in Ireland, assembled at any general or quarter sessions in any division of such county or riding are of opinion that for the purpose of affording further facilities for polling at contested elections there should be within such district polling places in addition to the places appointed in manner aforesaid, they may by resolution determine that at the next general or quarter sessions in such division of such county the necessity for such additional polling places shall be considered by the chairman and justices assembled at the same:

15. The clerk of the peace of such county shall, within five days after the making of such resolution, send a written or printed copy of the same to the chairman and to every justice of the peace having jurisdiction within the county to which the same relates, and shall cause a copy of such resolution to be published twice in each of two consecutive weeks in some newspaper circulated in such county: 35 & 36 Vic c. 33.
16. The said chairman and justices assembled at such general or quarter sessions holden next after the making of such resolution shall consider whether additional polling places are necessary, and if they are of such opinion they may, by an order to be made in like manner and subject to the same provisions as to the making, confirming, and taking effect of the same as are in this section contained in relation to orders to be made at special sessions under the authority of the same, appoint such other places to be polling places as they shall think fit, and shall constitute polling districts for such polling places:
17. No election shall be questioned by reason of any polling district not having been constituted in conformity with the provisions of this act, or by reason of any informality relative to any polling district:
18. When any day fixed for taking the poll at any election is the day fixed for the holding of the petty sessions court at any polling place, the court shall stand *ipso facto* adjourned till the next day, which shall in that case be the legal day for holding said court, and if that day be a Sunday or legal holiday, till the next day:
19. The term "the lord lieutenant" in this section shall mean the lord lieutenant of Ireland and the lords justices or other chief governors or governor of Ireland for the time being, and the term "chairman of quarter sessions" in this section shall include any person duly appointed to do the duty of such chairman during his sickness or absence.
19. Where the name of any person is required to be inserted in any list of voters for any ward of any city, town, or borough under the provisions of section seven of the act passed in the session of parliament held in the thirteenth and fourteenth years of the reign of her present majesty, chapter sixty-eight, as qualified in respect of any property qualification, or as the occupier of any lands, tenements, or hereditaments situate in whole or in part beyond the limits of such ward, then and in every such case the names so required to be inserted shall be placed in alphabetical order in a separate part of such list to be styled "the list of rural or out voters of such ward," and the property, lands, tenements, and hereditaments in respect

Amendment of law as to voting in wards in certain boroughs.

36 & 36 Vict. of which such person is qualified as aforesaid shall for the purposes of the said acts and the acts amending the same, in relation to the providing of booths and compartments within each ward of any city, town, or borough, and the voting therein of persons entitled to vote in respect of any such qualifications aforesaid, be deemed to constitute a separate ward: Provided always, that the name of any such person shall not be placed in such separate list if such person shall, in writing under his hand, object thereto, and if such objection is delivered to such clerk of the peace on or before the twenty-fifth day of August next preceding the making of such list under the provisions aforesaid, and in such case in relation to such person the provisions of this section shall not apply.

PART II.

MUNICIPAL ELECTIONS.

Application to municipal elections of enactments relating to the poll at parliamentary elections.

20. The poll at every contested municipal election shall, so far as circumstance admit, be conducted in the manner in which the poll is by this act directed to be conducted at a contested parliamentary election, and subject to the modifications expressed in the schedules annexed hereto, such provisions of this act and of the said schedules as relate to or are concerned with a poll at a parliamentary election shall apply to a poll at a contested municipal election: provided as follows:

1. The term "returning officer" shall mean the mayor or other officer who, under the law relating to municipal elections, presides at such elections:
2. The term "petition questioning the election or return" shall mean any proceeding in which a municipal election can be questioned:
3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll:
4. All expenses shall be defrayed in manner provided by law with respect to the expenses of a municipal election:
5. No return shall be made to the clerk of the crown in chancery:
6. Nothing in this act shall be deemed to authorise the appointment of any agents of a candidate in a municipal election, but if in the case of a municipal election any agent of a candidate is appointed, and a notice in writing of such appointment is given to the returning officer, the provisions of this act with respect to agents of candidates shall, so far as respects such agent, apply in the case of that election:
7. The provisions of this act with respect to—
 - (a.) The voting of a returning officer; and

- (b.) The use of a room for taking a poll ; and 35 & 36 Vict.
(c.) The right to vote of persons whose names are on c. 53.
the register of voters ;

shall not apply in the case of a municipal election.

A municipal election shall, except in so far as relates to the taking of the poll in the event of its being contested, be conducted in the manner in which it would have been conducted if this act had not passed.

21. Assessors shall not be elected in any ward of any municipal borough, and a municipal election need not be held before the assessors or their deputies, but may be held before the mayor, alderman, or other returning officer only. Abolition of ward assessors.

Application of Part of Act to Scotland.

22. This part of this act shall apply to Scotland subject to the following provisions :— Alterations for application of Part II. to Scotland.

1. The term "mayor" shall mean the provost or other chief magistrate of a municipal borough, as defined by this act :
2. All municipal elections shall be conducted in the same manner in all respects in which elections of councillors in the Royal Burghs contained in schedule C. to the act of the session of the third and fourth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to alter and amend the Laws for the Election of the Magistrates and Councillors of the Royal Burghs in Scotland," are directed to be conducted by the acts in force at the time of the passing of this act as amended by this act ; and all such acts shall apply to such elections accordingly.

Alteration for Application of Part II. to Ireland.

23. This part of this act shall apply to Ireland, with the following modifications :—

1. The term "mayor" shall include the chairman of commissioners, chairman of municipal commissioners, chairman of town commissioners, and chairman of township commissioners : Alterations for application of Part II. to Ireland.
2. The Provisions of The Municipal Corporation Act, 1859, following: that is to say, section five and section six, and section seven except so much thereof as relates to the form of nomination papers, and section eight except so much thereof as relates to assessors, shall extend and apply to every municipal borough in Ireland, and shall be substituted for any provisions in force in relation to the nomination at municipal elections : provided always, that the term "councillor" in these sections shall for the purposes 22 Vic. c. 35.

5 & 36 Vict.
33.

of this section include alderman, commissioner, municipal commissioner, town commissioner, township commissioner, or assessor of any municipal borough.

PART III.

PERSONATION.

Definition
and punish-
ment of
ersonation.

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections:

A person shall for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years together with hard labour. It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the third schedule to this act, shall in England and Ireland respectively apply to personation under this act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said acts.

The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

If, on the trial of any election petition questioning the election or return for any county or borough, any candidate is found by the report of the judge by himself or his agents to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at such election of the offence of personation by any person, such candidate shall be incapable of being elected

or sitting in parliament for such county or borough during 35 & 36 Viet. the parliament then in existence. c. 33.

25. Where a candidate, on the trial of an election petition claiming the seat for any person, is proved to have been guilty, by himself or by any person on his behalf, of bribery, treating, or undue influence in respect of any person who voted at such election, or where any person retained or employed for reward by or on behalf of such candidate for all or any of the purposes of such election, as agent, clerk, messenger, or in any other employment, is proved on such trial to have voted at such election, there shall, on a scrutiny, be struck off from the number of votes appearing to have been given to such candidate one vote for every person who voted at such election and is proved to have been so bribed, treated, or unduly influenced, or so retained or employed for reward as aforesaid. Vote to be struck off for bribery, treating, or undue influence.

26. This part of this act shall apply to Scotland, subject to the following provision:— Alterations in Act as applying to Scotland.

The offence of personation shall be deemed to be a crime and offence, and the rules of the law of Scotland with respect to apprehension, detention, precognition, commitment, and bail shall apply thereto, and any person accused thereof may be brought to trial in the court of justiciary, whether in Edinburgh or on circuit, at the instance of the lord advocate, or before the sheriff court, at the instance of the procurator fiscal.

27. This part of this act, so far as regards parliamentary elections, shall be construed as one with The Parliamentary Elections Act, 1868, and shall apply to an election for a university or combination of universities. Construction of part of Act.

PART IV.

MISCELLANEOUS.

28. The schedules to this act, and the notes thereto, and directions therein, shall be construed and have effect as part of this act. Effect of schedules.

29. In this act—

The expression “municipal borough” means any place for the time being subject to the Municipal Corporation Acts, or any of them: Definitions. “Municipal borough:”

The expression “Municipal Corporation Acts” means—

(a) As regards England, the act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An act to provide for the regulation of municipal corporations” “Municipal Corporation Acts:”

35 & 36 Vict.
c. 33.

in England and Wales," and the acts amending the same :

- (b) As regards Scotland, the act of the session of the third and fourth years of the reign of King William the Fourth, chapter seventy-six, intituled "An act to alter and amend the laws for the election of magistrates and councillors of the royal burghs in Scotland," and the act of the same session, chapter seventy-seven, intituled "An act to provide for the appointment and election of magistrates and councillors for the several burghs and towns of Scotland which now return or contribute to return members to parliament, and are not royal burghs," and the act of the session of the thirteenth and fourteenth years of the reign of her present majesty, chapter thirty-three, intituled "An act to make more effectual provision for regulating the police of towns and populous places in Scotland, and for paving, draining, cleansing, lighting, and improving the same;" and The General Police and Improvement (Scotland) Act, 1862, and any acts amending the same :

- (c) As regards Ireland, the act of the session of the third and fourth years of the reign of her present majesty, chapter one hundred and eight, intituled "An Act for the Regulation of Municipal Corporations in Ireland," the act of the ninth year of George the Fourth, chapter eighty-two, The Towns Improvement (Ireland) Act, 1854, and every local and personal act providing for the election of commissioners in any towns or places for purposes similar to the purposes of the said acts.

The expression "municipal election" means—

"Municipal
election."

- (a) As regards England, an election of any person to serve the office of councillor, auditor, or assessor of any municipal borough, or of councillor for a ward of a municipal borough: and
- (b) As regards Scotland, an election of any person to serve the office of councillor or commissioner of any municipal borough, or of a ward or district of any municipal borough :
- (c) As regards Ireland, an election of any person to serve the office of alderman, councillor, commissioner, municipal commissioner, town commissioner, township commissioner, or assessor of any municipal borough.

Application
of Act.
Saving.

30. This act shall apply to any parliamentary or municipal election which may be held after the passing thereof.

31. Nothing in this act, except Part III. thereof, shall

apply to any election for a university or combination of 35 & 36 Vict. c. 33.
universities.

Repeal.

32. The acts specified in the fourth, fifth, and sixth schedules to this act, to the extent specified in the third column of those schedules, and all other enactments inconsistent with this act, are hereby repealed. Repeal of Acts in schedules.

Provided that this repeal shall not affect—

- (a) Anything duly done or suffered under any enactment hereby repealed; or
- (b) Any right or liability acquired, accrued, or incurred under any enactment hereby repealed; or
- (c) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (d) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this act had not passed.

33. This act may be cited as The Ballot Act, 1872, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless parliament shall otherwise determine; and on the said day the acts in the fourth, fifth, and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this act, but such proceeding shall be carried on as if this act had continued in force. Short title.

SCHEDULES.

FIRST SCHEDULE.

PART I.

RULES FOR PARLIAMENTARY ELECTIONS.

Elections.

1. The returning officer shall, in the case of a county election, within two days after the day on which he receives the writ, and in the case of a borough election, on the day on which he receives the writ or the fol-

lowing day, give public notice, between the hours of nine in the morning and four in the afternoon, of the day on which and the place at which he will proceed to an election, and of the time appointed for the election, and of the day on which the poll will be taken in case the election is contested, and of the time and place at which forms of nomination papers may be obtained, and in the case of a county election shall send one of such notices by post, under cover, to the postmaster of the principal post office of each polling place in the county, endorsed with the words "Notice of election," and the same shall be forwarded free of charge; and the postmaster receiving the same shall forthwith publish the same in the manner in which post-office notices are usually published.

2. The day of election shall be fixed by the returning officer as follows; that is to say, in the case of an election for a county or a district borough not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in the case of an election for any borough other than a district borough not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the day on which he gives the notice and the day of election.

3. The place of election shall be a convenient room situate in the town in which such election would have been held if this act had not passed, or where the election would not have been held in a town, then situate in such town in the county as the returning officer may from time to time determine as being in his opinion most convenient for the electors.

4. The time appointed for the election shall be such two hours between the hours of ten in the forenoon and three in the afternoon as may be appointed by the returning officer, and the returning officer shall attend during those two hours and for one hour after.

5. Each candidate shall be nominated by a separate nomination paper, but the same electors or any of them may subscribe as many nomination papers as there are vacancies to be filled, but no more.

6. Each candidate shall be described in the nomination paper in such manner as in the opinion of the returning officer is calculated to sufficiently identify such candidate; the description shall include his names, his abode, and his rank, profession, or calling, and his surname shall come first in the list of his names. No objection to a nomination paper on the ground of the description of the candidate therein being insufficient, or not being in compliance with this rule, shall be allowed or deemed valid, unless such objection is made by the returning officer, or by some other person, at or immediately after the time of the delivery of the nomination paper.

7. The returning officer shall supply a form of nomination paper to any registered elector requiring the same during such two hours as the returning officer may fix, between the hours of ten in the morning and two in the afternoon on each day intervening between the day on which notice of the election was given and the day of election, and during the time appointed for the election; but nothing in this act shall render ob-

ligatory the use of a nomination paper supplied by the returning officer, so, however, that the paper be in the form prescribed by this act.

8. The nomination papers shall be delivered to the returning officer, at the place of election during the time appointed for the election; and the candidate nominated by each nomination paper, and his proposer and seconder, and one other person selected by the candidate, and no person other than aforesaid, shall, except for the purpose of assisting the returning officer, be entitled to attend the proceedings during the time appointed for the election.

9. If the election is contested the returning officer shall, as soon as practicable after adjourning the election, give public notice of the day on which the poll will be taken, and of the candidates described as in their respective nomination papers, and of the names of the persons who subscribe the nomination paper of each candidate, and of the order in which the names of the candidates will be printed in the ballot paper, and, in the case of an election for a county, deliver to the postmaster of the principal post-office of the town in which is situate the place of election a paper, signed by himself, containing the names of the candidates nominated, and stating the day on which the poll is to be taken, and the postmaster shall forward the information contained in such paper by telegraph, free of charge, to the several postal telegraph offices situate in the county for which the election is to be held, and such information shall be published forthwith at each such office in the manner in which post-office notices are usually published.

10. If any candidate nominated during the time appointed for the election is withdrawn in pursuance of this act, the returning officer shall give public notice of the name of such candidate, and the names of the persons who subscribed the nomination paper of such candidate, as well as of the candidates who stood nominated or were elected.

11. The returning officer shall, on the nomination paper being delivered to him, forthwith publish notice of the name of the person nominated as a candidate, and of the names of his proposer and seconder, by placarding or causing to be placarded the names of the candidate and his proposer and seconder in a conspicuous position outside the building in which the room is situate appointed for the election.

12. A person shall not be entitled to have his name inserted in any ballot paper as a candidate unless he has been nominated in manner provided by this act, and every person whose nomination paper has been delivered to the returning officer during the time appointed for the election shall be deemed to have been nominated in manner provided by this act, unless objection be made to his nomination paper by the returning officer or some other person before the expiration of the time appointed for the election or within one hour afterwards.

13. The returning officer shall decide on the validity of every objection made to a nomination paper, and his decision, if disallowing the objection, shall be final; but if allowing the same, shall be subject to reversal on petition questioning the election or return.

The Poll.

14. The poll shall take place on such day as the returning officer may appoint, not being in the case of an election for a county or a district borough less than two or more than six clear days, and not being in the case of an election for a borough other than a district borough more than three clear days after the day fixed for the election.

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such a manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.

*16. Each polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

*19. The returning officer shall give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the second schedule to this act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station,

* 38 & 39 Vict. c. 40, § 4. These rules are not to apply to Municipal Elections and new provisions are substituted.

just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in the manner prescribed by this act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this act called "the list of votes marked by the presiding officer."

The said declaration, in this act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a

separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this act called the tendered votes list.

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals—

1. Each ballot box in use at his station, unopened but with the key attached; and
2. The unused and spoilt ballot papers, placed together; and
3. The tendered ballot papers; and
4. The marked copies of the register of voters, and the counterfoils of the ballot papers; and
5. The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver such packets to the returning officer.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this act referred to as the ballot paper account.

Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. Before the returning officer proceeds to count the votes, he shall in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the numbers thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and record-

ing the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the clerk of the crown in chancery the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and shall on request allow any agent of the candidates, before such report is sent, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the clerk of the crown in chancery the result of such verification, and shall, on request, allow any agent of the candidates, before such report is sent, to copy it.

38. Lastly, the returning officer shall forward to the clerk of the crown in chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactments shall be construed to include any document forwarded in pursuance of this rule.

39. The clerk of the crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this act by a returning officer, and then, unless otherwise directed by an order of the house of commons, or of one of her majesty's superior courts, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the clerk of the crown in chancery, except under the order of the house of commons or under the order of one of her majesty's superior courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the house or court making the same may think expedient, and shall be obeyed by the clerk of the crown in chancery. Any power given to a court by this rule may be exercised by any judge of such court at chambers.

41. No person shall, except by order of the house of commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the clerk of the crown in chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the house or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

42. All documents forwarded by a returning officer in pursuance of this act to the clerk of the crown in chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the clerk of the crown in chancery, with the consent of the speaker of the house of commons, and the clerk of the crown shall supply copies of or extracts from the said documents to any person demanding the same on payment of such fees and subject to such regulations as may be sanctioned by the treasury.

43. Where an order is made for the production by the clerk of the crown in chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such clerk of the crown or his agent shall be evidences of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and

having a number marked thereon in writing, shall be *prima facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

General Provisions.

44. The return of a member or members elected to serve in Parliament for any county or borough shall be made by a certificate of the names of such member or members under the hand of the returning officer endorsed on the writ of election for such county or borough, and such certificate shall have effect and be dealt with in like manner as the return under the existing law, and the returning officer may, if he think fit, deliver the writ with such certificate endorsed to the postmaster of the principal post-office of the place of election, or his deputy, and in that case he shall take a receipt from the postmaster or his deputy, for the same; and such postmaster or his deputy shall then forward the same by the first post, free of charge, under cover to the clerk of the crown, with the words "Election Writ and Return" endorsed thereon.

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in case of a contested election, of the total number of votes given for each candidate, whether elected or not.

46. Where the returning officer is required or authorised by this act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this act, attend.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the

33. & 36 Vict. poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at the polling station or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this act, Sunday Christmas day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above-mentioned.

57. In this act—

The expression "district borough" means the borough of Monmouth and any of the boroughs specified in schedule E. to the act of the session of the second and third years of the reign of King William the Fourth, chapter forty-five, intituled "An Act to Amend the Representation of the People in England and Wales;"

The expression "polling place" means, in the case of a 35 & 36 Vict. borough, such borough or any part thereof in which a separate booth is required or authorised by law to be provided; and c. 33.

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

Modification in Application of Part I. of Schedule to Scotland.

58. In Scotland, the place of election shall be a convenient room situate in the town in which the writ for the election would, if this act had not passed, have been proclaimed.

59. In Scotland, the candidates may respectively appoint agents to attend at the polling stations. The ballot papers and other documents other than the return required to be sent to and kept by the Clerk of the Crown in Chancery, shall in Scotland, be kept by the sheriff clerks of the respective counties in which the returns (including those for burghs) are made, and the provisions of this schedule relating thereto shall be construed as if the sheriff clerk was substituted for Clerk of the Crown in Chancery.

60. In Scotland, the term "district borough" shall mean the combined burghs and towns specified in schedule E. of the act of the session of the second and third years of the reign of King William the Fourth, chapter sixty-five, intituled "An Act to amend the Representation of the People in Scotland;" and in schedule A. of the representation of the People (Scotland) Act, 1868.

61. The provisions of the Act of the session of the second and third years of the reign of King William the Fourth, chapter sixty-five, intituled "An Act to amend the Representation of the People in Scotland," in so far as they relate to the fixing and announcement of the day of election, the interval to elapse between the receipt of the writ and the day of election, the period of adjournment for taking the poll in the case of Orkney and Shetland, and of the district of burghs comprising Kirkwall, Wick, Dornock, Dingwall, Tain, and Cromarty, and to the keeping open of the poll for two consecutive days in the case of Orkney and Shetland, shall remain in full force and effect, anything in this act or any other act of Parliament now in force notwithstanding; but nothing herein contained shall be construed to exclude Orkney and Shetland or Orkney or Shetland, or the said district of burghs, or any of the burghs in the said district, from any of the benefits and obligations of the other portions of this act.

35 & 36 Vict. *Modifications in Application of Part I. of Schedule to*
c. 33. *Ireland.*

62. The expression "Clerk of the Crown in Chancery" in this schedule shall mean, as regards Ireland, "the Clerk of the Crown and Hanaper in Ireland."

63. A presiding officer at a polling station in a county in Ireland need not be a freeholder of the county.

PART II.

RULES FOR MUNICIPAL ELECTIONS.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made :—

(a) The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list ; and the mayor shall provide true copies of such register for each polling station :

(b) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough ; and the provisions of part one of the schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications ; namely,

(a) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of her majesty's superior courts ; but an appeal from such county court may be had in like manner as in other cases in such county court ;

(b) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of her majesty's principal secretaries of state ; and, subject as aforesaid, the town clerk, in respect of the custody and destruction

of the ballot papers and other documents coming 35 & 36 Vict
into his possession in pursuance of this act, shall c. 33.
be subject to the directions of the council of the
borough;

(c) Nothing in this schedule with respect to the
day of the poll shall apply to a municipal election.

*Modifications in application of Part II. of Schedule to
Scotland.*

65. In part two of this schedule as applying to Scotland—
The expression "register of voters" means the register,
list, or roll of persons entitled to vote in a municipal
election made up according to the law for the time being
in force.

The expression "county court" means the sheriff court.

The expression "town clerk" includes the clerk appointed
by the commissioners of police under the act of the session
of the thirteenth and fourteenth years of the reign of her
present majesty, chapter thirty-three, intituled "an act
to make more effectual provision for regulating the police
of towns and populous places in Scotland, and for paving,
draining, cleansing, lighting, and improving the same,"
and of the General Police and Improvement (Scotland)
Act, 1862.

*Modifications in application of Part II. of Schedule to
Ireland.*

66. In part two of this schedule as applying to Ireland—
The expression "register of voters," in addition to the
meaning specified in such part, means, in relation to any
municipal borough subject to the provisions of a local act
requiring an annual revision of the list of voters at muni-
cipal elections, the register of voters made in conformity
with the said provisions of such local act, and in relation
to municipal boroughs to which Part II. of the Local
Government (Ireland) Act, 1871, applies, the list to be
made under the provisions of section twenty-seven of the
said act, and in relation to other municipal boroughs a
list which the town clerk of every municipal borough is
hereby authorised and directed to make, in like manner
in every respect as if the provisions of the said section
were applicable to and in force within such municipal
borough.

The expression "county court" means the civil bill court.

The expression "town clerk" includes clerk to the commis-
sioners, municipal commissioners, town commissioners, or
township commissioners of any municipal borough, and
any person executing the duties of such town clerk.

35 & 36 Vict.
c. 83.

The expression "council of the borough" includes commissioners, municipal commissioners, and town commissioners of the town, and township commissioners of the township.

The expression "one of her majesty's principal secretaries of state" means the chief secretary of the Lord Lieutenant of Ireland.

SECOND SCHEDULE.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

Writ for a County or Borough at a Parliamentary Election.

* The name of the Sovereign may be altered when necessary.

† Insert "sheriff" or other returning officer.

‡ This preamble to be omitted except in case of a general election.

§ Except in a general election, insert here in the place of A.B., deceased, or otherwise, stating the cause of vacancy.

* Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the

† of the county [or borough] of

, greeting:

‡ Whereas by the advice of our Council we have ordered a Parliament to be holden at Westminster on the day of next. We command you that, notice of the time and place of election being first duly given, you do cause election to be made according to law of members [or a member] to serve in Parliament for the said county [or the division of the said county, or the borough, or as the case may be] of § and that you do cause the names of such members [or member] when so elected, whether they [or he] be present or absent to be certified to us, in our chancery, without delay.

Witness ourself at Westminster, the day of in the year of our reign, and in the year of our Lord 18 .

Label or direction of Writ.

To the † of

A writ of a new election of members [or member] for the said county [or division of a county or borough, or as the case may be].

Endorsement.

Received the within writ on the day of 18 .

(Signed) A.B.,

High Sheriff [or Sheriff, or Mayor, or as the case may be].

THE BALLOT ACT, 1872.

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Certificate endorsed on the Writ.

35 & 36 Vict.
c. 33.

I hereby certify, that the members [or member] elected
for in pursuance of the within-written writ, are
[or is] A.B. of in the county of and
C.D. of in the county of

(Signed) A.B.,

High Sheriff or Sheriff, or Mayor, or as the case may be].

Note.—A separate writ will be issued for each county as defined for the purposes of a parliamentary election.

Form of Notice of Parliamentary Election.

* *Note.*
Insert
description
of place and
room.

The returning officer of the of
will, on the day of now next en-
suing, between the hours of and , proceed to
the nomination, and, if there is no opposition, to the election,
of a member [or members] for the said county [or division of a
county or borough] at the*

Forms of nomination paper may be obtained at

*, between the hours of and on

Every nomination paper must be signed by two registered
electors as proposer and seconder, and by eight other registered
electors as assenting to the nomination.

Every nomination paper must be delivered to the returning
officer by the candidate proposed, or by his proposer and
seconder, between the said hours of and
on the said day of at the said *

Each candidate nominated, and his proposer and seconder,
and one other person selected by the candidate, and no other
persons, are entitled to be admitted to the room.

In the event of the election being contested, the poll will
take place on the day of

(Signed) A.B.,

Sheriff [or Mayor, or as the case may be].
day of 18

Take notice, that all persons who are guilty of bribery,
treating, undue influence, personation, or other corrupt prac-
tices at the said election will, on conviction of such offence,
be liable to the penalties mentioned in that behalf in "The
Corrupt Practices Prevention Act, 1854," and the Ballot Act,
1872, and the acts amending the said acts.

Form of Nomination Paper in Parliamentary Election.

We, the undersigned A.B. of in the
of and C.D. of in the of ,
being electors for the of , do
hereby nominate the following person as a proper person to
serve as member for the said in Parliament:

25 & 26 Vict.
c. 33.

| Surname. | Other names. | Abode. | Rank, Profession, or Occupation. |
|----------|---|----------------------------|--|
| BROWN | JOHN | 52, George St., Bristol | Merchant. |
| JONES | <i>or</i> WILLIAM DAVID . | High Elms, Wilts | Esquire. |
| MERTON | <i>or</i> HON. GEORGE TRA- VIS, commonly called Viscount | Swanworth, Berks | Viscount. |
| SMITH | <i>or</i> HENRY SYDNEY . | 72, High St., Bath | Attorney. |

(Signed) A.B.
C.D.

We, the undersigned, being registered electors of the
do hereby assent to the nomination of the above-mentioned
John Brown as a proper person to serve as member for the
said in parliament.

(Signed) E.F. of
G.H. of
I.J. of
K.L. of
M.N. of
O.P. of
Q.R. of
S.T. of

Note.—Where a candidate is an Irish peer, or is commonly
known by some title, he may be described by his title as if it
were his surname.

*Form of Nomination Paper in Municipal Election.**

Note.—The form of nomination paper in a municipal
election shall as nearly as circumstances admit be the same
as in the case of a parliamentary election.

* 38 & 39 Vic. c. 40. Repeals the directions in the Schedule
to the Act as to the form of Nomination Papers at Municipal
Elections.


THE BALLOT ACT, 1872.

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Form of Ballot Paper.

35 & 36 Vict.
c. 33.

Form of Front of Ballot Paper.

| | | | |
|---|---|---|--|
|  | 1 | BROWN (John Brown, of 52, George St., Bristol, merchant.) | <p>* <i>Note.</i>— The counter-foil is to have a number to correspond with that on the back of the ballot paper.</p> |
| | 3 | JONES (William David Jones, of High Elms, Wilts, Esq.) | |
| | 3 | MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.) | |
| | 4 | SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.) | |

Form of back of Ballot Paper.

No. Election for county [or borough, or ward].
18 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

35 & 36 Vict. c. 33. *Form of directions for the guidance of the voter in voting, which shall be printed in conspicuous characters, and placarded outside every polling station and in every compartment of every polling station.*

The voter may vote for candidate.

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied with such inadvertence, give him another paper.

If the voter votes for more than candidate, or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of statutory declaration of secrecy.

I solemnly promise and declare, that I will not at this election for do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Form of declaration of inability to read.

I, *A. B.*, of , being numbered on the register of voters for the county [or borough] of do hereby declare that I am unable to read.

A. B., his mark.

day of

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I, the undersigned, being the presiding officer for the 35 & 36 Vict.
polling station for the county [or borough] of c. 33.
, do hereby certify, that the above declaration,
having been first read to the above-named A.B., was signed
by him in my presence with his mark.

Signed, C.D.,
Presiding officer for polling station
for the county [or borough] of
day of

THIRD SCHEDULE.

Provisions of registration acts referred to in Part III. of the
foregoing act.

| Session and Chapter. | Title. | Part applied. |
|-----------------------|---|--|
| <i>As to England.</i> | | |
| 6 & 7 Vict. c. 18. | An Act to amend the law for the registration of persons entitled to vote, and to define certain rights of voting, and to regulate certain proceedings in the elections of members to serve in Parliament for England and Wales. | Sections eighty-five to eighty-nine, both inclusive. |
| <i>As to Ireland.</i> | | |
| 18 & 14 Vict. c. 69. | An Act to amend the laws which regulate the qualification and registration of parliamentary voters in Ireland, and to alter the law for rating immediate lessors of premises to the poor rate in certain boroughs. | Sections ninety-two to ninety-six, both inclusive. |

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**35 & 36 Vict.
c. 33.**

APPENDIX.

FOURTH SCHEDULE.

Repeal of Acts relating to England.

FIFTH SCHEDULE.

Repeal of Acts relating to Scotland.

SIXTH SCHEDULE.

Repeal of Acts relating to Ireland.

THE CORRUPT PRACTICES (MUNICIPAL ELECTIONS) ACT, 1872.

35 & 36 VICTORIA.

CAP. LX.

An Act for the better prevention of Corrupt Practices at Municipal Elections, and for establishing a Tribunal for the trial of the validity of such Elections, 1872.

WHEREAS it is expedient to make provision for the better prevention of corrupt practices at municipal elections, and for establishing a tribunal for the trial of the validity of such elections: 35 & 36 Vict.
c. 60.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Preliminary.

1. This Act may be cited for all purposes as the "Corrupt Practices (Municipal Elections) Act, 1872."

2. In this Act, except where the context otherwise requires, the following words and expressions shall respectively be construed as follows, viz.: Definitions.

1. "Borough" means a place for the time being subject to the provisions of the Act of the fifth and sixth of William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," as amended by the Acts amending the said Act:
- "Office" means the office of mayor, alderman, councillor, auditor, or assessor, of a borough, or ward of a borough:
- "Election" means an election to an office:
- "Candidate" means a person elected, or who has been nominated or has declared himself a candidate for election to an office:
- "Canvasser" means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at an election, or to vote or to

35 & 36 Vict.
c. 60.

Prohibition
of paid can-
vassers.

7. No person who is included in a register for a borough or ward thereof as a burgess or citizen shall be retained or employed for payment or reward by or on behalf of a candidate at an election for such borough or any ward thereof as a canvasser for the purposes of the election.

If any person is retained or employed by or on behalf of a candidate at an election in contravention of this prohibition, such person and also the candidate or other person by whom he is retained or employed shall be deemed to be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding ten pounds.

An agent or canvasser who is retained or employed for payment or reward for any of the purposes of an election shall not vote at the election, and if he votes he shall be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding ten pounds.

Prohibition
of payment
for convey-
ance of
voters.

8. If a candidate or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, such candidate or agent shall be deemed to be guilty of an offence against this Act, and shall be liable on summary conviction before two justices of the peace to a penalty not exceeding five pounds.

Prosecutions
for corrupt
practices.

9. The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for either of the corrupt practices of bribery, undue influence, or personation at an election, together with compensation for trouble and loss of time, shall, unless the court before which such person is prosecuted otherwise directs, be allowed, paid, and borne in the same manner in which they may be allowed, paid, and borne in cases of felony.

Provisions
for striking
off votes.

The clerk of the peace of the county in which a borough is situate, or in the case of a borough which is a county of a city or a county of a town or in which there is a clerk of the peace, the clerk of the peace of such county of a city or county of a town or borough, shall, if he is directed by an election court acting under the provisions of this Act to prosecute any person for either of the corrupt practices of bribery, undue influence, or personation at the election in respect of which the court acts, or to sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this Act at such election, prosecute, sue, or proceed against such person accordingly.

As to alleged
personation.

10. The votes of persons in respect of whom any corrupt practice is proved to have been committed shall be struck off on a scrutiny.

Subject to the provisions of this section a register shall for all purposes be conclusive as to the right of the persons in-

cluded therein to vote at an election for the purposes whereof such register is in force; but nothing in this section shall entitle any person to vote who is by any Act or law prohibited from voting at an election on the ground of any disqualification by office or disability, nor shall relieve any such person from any penalty, liability, or punishment to which he may by law be subject by reason of his voting at an election.

11. The provisions of the Acts for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.

PART II.

Election Petitions.

12. The election of any person at an election for a borough or ward, may be questioned by petition before an election court constituted as hereinafter in this Act provided, and hereinafter in this Act referred to as the "court," on the ground that the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation, or on the ground that the election of such person was avoided by corrupt practices or offences against this Act committed at the election, or on the ground that he was at the time of the election disqualified for election to the office for which the election was held, or on the ground that he was not duly elected by a majority of lawful votes.

Municipal elections may be questioned by petition.

An election shall not, except in the manner provided by this Act, be questioned upon an information in the nature of a quo warranto or by or in any process or manner whatsoever for a matter for which it might be questioned under the provisions of this Act.

13. The following provisions shall have effect with reference to the presentation of a petition complaining of an undue election (hereinafter in this Act referred to as a "petition"):

Presentation of petition.

1. A petition may be presented either by four or more persons who voted or who had a right to vote at the election or by a person alleging himself to have been a candidate at the election:

A petition shall be in the prescribed form and shall be signed by the petitioner or petitioners, and shall be presented to the superior court in the prescribed manner, and the prescribed officer shall send a copy thereof to the town clerk of the borough to which it relates, who shall forthwith publish it in the borough:

The terms "petitioner" and "respondent," as herein-after used in this Act, include respectively any one or

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c. 60.

more persons by whom a petition is presented, and any one or more persons against whose election a petition is presented :

2. A petition shall be presented within twenty-one days after the day on which the election was held, unless it complain of the election on the ground of corrupt practices, and specifically allege a payment of money or other reward to have been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, in which case it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against such person has been previously presented or tried :
3. At the time of presenting a petition, or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent. The security shall be to the amount of five hundred pounds, and shall be given in the prescribed manner either by a deposit of money or by recognizance entered into by not exceeding four sureties, or partly in one way and partly in the other :
4. Within five days after the presentation of a petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation and of the nature of the proposed security, and a copy of the petition ; and the respondent may within five days from the service of the notice object in writing to any surety by way of recognizance on the ground that any security is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same. An objection to a recognizance shall be decided in the prescribed manner :
5. If an objection to the security is allowed it shall be lawful for the petitioner, within a further prescribed time not exceeding five days, to remove such objection by a deposit in the prescribed manner of such sum of money as may be deemed by the court or officer having cognizance of the matter to make the security sufficient :

If on objection made the security is decided to be insufficient, and the objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition ; but otherwise

on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue: 55 & 33 Vict. c. 60

6. Where a petition complains of the conduct of a returning officer, he shall be deemed to be a respondent:
7. The prescribed officer shall so soon as may be make out a list of all petitions under this Act presented to the superior court which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the "Municipal Election List," open to the inspection in the prescribed manner of any person making application to inspect the same:
8. The petitions shall, so far as conveniently may be, be tried in the order in which they stand in such list:
9. Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent:
10. Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, all such petitions shall in the municipal election list be bracketed together as one petition, but such petitions shall stand in the list in the place where the last of such petitions would have stood if it had been the only petition relating to that election, unless the superior court otherwise directs.
14. An election court for the trial of petitions under this Act shall be constituted as follows: Constitution of election court.
 1. A petition shall be tried by a barrister qualified and appointed as hereinafter provided, without a jury:
 2. So soon as may be after a municipal election list is made out a copy thereof shall by the prescribed officer be transmitted to each of the judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868, and the said judges or any two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the petitions at issue, and shall assign the petitions to be tried by them respectively:
 4. No barrister shall be appointed or act for the purposes of this Act who is of less than fifteen years' standing, or who is a member of Parliament, or who holds any

35 & 36 Vict.
c. 60.

office or place of profit under the Crown, other than that of a recorder, and no barrister shall try a petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister :

4. If a barrister to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or any two of them may assign the trial to be conducted or continued by any other of the barristers appointed as aforesaid :
5. The court shall for the purposes of the trial of a petition have all the same powers and privileges which a judge may have on the trial of an election petition under the provisions of the Parliamentary Elections Act, 1868, with this modification, that any fine or order of committal by the court may upon motion by the person aggrieved be discharged or varied by the superior court, or in vacation by a judge thereof, upon such terms, if any, as such superior court or judge thinks fit.

**Trial of a
petition.**

15. The following provisions shall have effect with respect to the trial of a petition :

1. A petition shall be tried in open court, and notice of the time and place at which the petition will be tried shall be given not less than seven days before the day on which the trial is held, in the prescribed manner :
2. A petition shall be tried within the borough to which it relates ; provided that, if it appear to the superior court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the borough, it shall be lawful for the superior court to appoint such other place for the trial as appears most convenient.
3. The court may adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held, as may seem expedient :
4. At the conclusion of the trial the court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the superior court, and upon the certificate being given the determination shall be final to all intents and purposes as to the matters at issue on the petition :
5. Where any charge is made in a petition of any corrupt practice or offence against this Act having been com-

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mitted at the election to which the petition refers, the court shall, in addition to the certificate, and at the same time, report in writing to the superior court as follows :

(a) Whether any corrupt practice or offence against this Act has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of such corrupt practice or offence against this Act,

(b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice or offence under this Act,

(c) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have extensively prevailed at the election to which the petition relates, in the borough or in any ward thereof,

The court may at the same time make a special report to the superior court as to any matters arising in the course of the trial, an account of which, in the judgment of the court, ought to be submitted to the superior court :

6. Where, upon the application of any party to a petition made in the prescribed manner to the superior court, it appears to that court that the case raised by the petition can be conveniently stated as a special case, that court may direct the same to be stated accordingly, and any such special case shall be heard before the superior court, and the decision of the superior court shall be final :
7. If it appear to the court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the superior court, the court may postpone the granting of a certificate until such question has been determined by the superior court, and for this purpose may reserve any such question, in like manner in which questions may be reserved by a judge on a trial *à nisi prius* :
8. On the trial of a petition, unless the court otherwise directs, any charge of a corrupt practice or offence against this Act may be gone into, the evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of such corrupt practice or offence :
9. On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that such person

35 & 36 Vict.
c. 60.

was not duly elected, in the same manner as if he had presented a petition against the election of such person :

10. The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition :
11. A copy of any certificate or report made to the superior court upon the trial of a petition or a statement of any decision made by the superior court shall by the superior court be transmitted to one of Her Majesty's Principal Secretaries of State :
12. A copy of any certificate made by the court to the superior court, or in the case of a decision by the superior court upon a special case a statement of such decision shall be certified by the superior court, under the hands of two or more judges of the superior court, to the town clerk of the borough to which the petition relates.

Provisions as to witnesses. **16.** The following provisions shall have effect with respect to witnesses at the trial of a petition :

1. Witnesses shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury :
2. On the trial of a petition the court may, by order in writing, compel the attendance of any person as a witness who appears to the court to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The election court may examine any witness so compelled to attend, or any person in court although such witness is not called and examined by any party to the petition. After the examination of a witness by the election court such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them :
3. The provisions of the seventh section of the Act of the twenty-sixth and twenty-seventh of Her Majesty, chapter twenty-nine, relating to the examination and indemnity of witnesses, shall apply to any witness appearing before the court on the trial of a petition under this Act, and the certificate shall be given by the court ; provided always, that the giving or refusal to give such certificate by the court shall be final and conclusive, and shall not be questioned by any proceeding or in any court whatsoever :
4. The reasonable expenses incurred by any person in appearing to give evidence at the trial of a petition ac-

cording to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to such person by a certificate of the court or of the prescribed officer, and such expenses, if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed to be costs of the petition. 35 & 36 Vic. c. 60.

17. The following provisions shall have effect with respect to the withdrawal and abatements of petitions: Withdrawal and abatement of petitions.

1. A petition shall not be withdrawn without the leave of the court or superior court upon special application, to be made in and at the prescribed manner, time and place:

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the borough to which the petition relates, of the intention of the petitioner to make an application for the withdrawal of his petition:

2. On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition:

The court or superior court may, if it think fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is in the opinion of the court or superior court induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner:

3. If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution:

4. Subject as aforesaid a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities, as the original petitioner;

If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent;

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners:

35 & 36 Vict.
c. 60.

5. A petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners ;

The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred ;

On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the borough to which the petition relates, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court in and at the prescribed manner, time, and place, to be substituted as a petitioner ;

The court or superior court may, if it think fit, substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.

Withdrawal
and substitution of
respondents.

18. The following provisions shall have effect with respect to the withdrawal and substitution of respondents upon a petition :

1. If before the trial of a petition either of the following events happens in the case of a respondent other than a returning officer : viz.,

(a) If he dies, resigns, or otherwise ceases to hold the office to which the petition relates ; or

(b.) If he gives the prescribed notice that he does not intend to oppose the petition ;

Notice of such event having taken place shall be given in the borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or superior court to be admitted as a respondent to oppose the petition, and such person shall be admitted accordingly, and any number of persons not exceeding three may be so admitted :

2. A respondent who has given the prescribed notice that he does not intend to oppose the petition, shall not be allowed to appear or act as a party against such petition in any proceedings thereon.

Costs on
petitions.

19. The following provisions shall have effect with respect to costs on the trial of a petition :

1. All costs, charges, and expenses of and incidental to the presentation of a petition, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by this Act otherwise

provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court by which the petition is tried may determine; and in particular any costs, charges, or expenses which in the opinion of the court by which the petition is tried have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether such parties are not on the whole successful:

2. The costs may be taxed in the prescribed manner, but according to the same principles as costs between attorney and client in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed:
3. If any petitioner neglect or refuse for the space of three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be, within one year after such demand, proved to the satisfaction of the superior court, every person who has entered into a recognizance relating to such petition under the provisions of this Act shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited, and the same shall be dealt with in the same manner as a forfeited recognizance under the provisions of the Parliamentary Elections Act, 1868.

20. The following provisions shall have effect with reference to the reception of the court upon the trial of a petition:

Reception of
and attend-
ance on the
court.

1. The town clerk of a borough in respect of which a petition is to be tried shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid by the treasurer of the borough out of the borough fund or rate:
2. All superintendents of police, chief constables, head-boroughs, gaolers, constables, and bailiffs, shall give their assistance to the court in the execution of the duties of the said court, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of the

35 & 36 Vict.
c. 60.

provisions of this Act he shall incur a **penalty** not exceeding five pounds for every day during which such default continues :

3. The court may employ such officers and clerks as may be allowed by general rules to be made under the provisions of this Act :
4. A shorthand writer shall attend at the trial of a petition, and shall be sworn by the court **faithfully** and truly to take down the evidence given at the trial, and shall take down the evidence at length, and a copy of the evidence so taken shall accompany the certificate of the said court, and the expenses of the shorthand writer, according to a scale to be prescribed, shall be deemed to be part of the expenses incurred in receiving the court.

Jurisdiction
and general
rules.

21. The following provisions shall have effect with respect to jurisdiction, and to general rules :

1. The judges for the time being on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868, may from time to time make, revoke, and alter general rules for the effectual execution of this Act, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of petitions, and the trial thereof, and the certifying and reporting thereon ;

Any general rules made as aforesaid shall, in so far as they are not inconsistent with any of the provisions of this Act, be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act ;

Any general rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament :

2. Until general rules have been made in pursuance of this Act, and so far as such rules (when made), and the provisions of this Act, do not extend, the principles, practice, and rules which are for the time being observed in the case of election petitions under the provisions of the Parliamentary Elections Act, 1868, shall be observed so far as may be by the court and superior court in the case of petitions under this Act :
3. The duties to be performed by the prescribed officer under this Act shall be performed by the prescribed officer of the superior court :
4. The rules and principles with regard to agency and

evidence, and with regard to a scrutiny, and with regard to the declaring any person to be elected in the room of any other person who is declared to have been not duly elected, which are applicable in the case of Parliamentary election petitions shall be applied so far as they are applicable in the case of a petition under this Act: 35 & 36 Vict. c. 60.

5. The superior court shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as it would have if the petition were an ordinary cause within its jurisdiction.

Miscellaneous Provisions.

22. The remuneration and allowances to be paid to a barrister for his services in respect of the trial of a petition, and to any officers, clerks, or shorthand writers employed under the provisions of this Act, shall be fixed by a scale which shall be made and may be varied from time to time by the election judges on the rota for the trial of election petitions under the provisions of the Parliamentary Elections Act, 1868, with the approval of the Commissioners of Her Majesty's Treasury, or any two or more of them, and the amount of any such remuneration and allowances shall be paid by the said commissioners, and shall be repaid to the said commissioners on their certificate, by the treasurer of the borough to which the petition relates, out of the borough fund or rate: Expenses of the court.

Provided that the court at its discretion may order that the whole or any part of such remuneration and allowances, or the whole or any part of the expenses incurred by a town clerk for receiving the court under the provisions of this Act, shall be repaid to the said commissioners or to the town clerk, as the case may be, in the cases, by the persons, in the manner following: viz.,

- (a.) When in the opinion of the court a petition is frivolous and vexatious, then by the petitioner;
- (b.) When in the opinion of the court a respondent has been personally guilty of corrupt practices at the election, then by such respondent:

And any order so made for the repayment of any sum by a petitioner or respondent may be enforced in the same way as an order for payment of costs; but any other costs or expenses payable by such petitioner or respondent to any party to the petition shall be satisfied out of any deposit or security made or given under the provisions of this Act before such deposit or security is applied for the repayment of any sum under an order made in pursuance of this section.

23. Where a candidate who has been elected to an office at an election is by a certificate of the court, or by a decision Acts done pending a

35 & 36 Vict.
c. 60.

petition not
to be invali-
dated.

Provisions as
to elections
in the room
of persons
unseated on
petition.

Computa-
tion of time.

Prohibition
of disclosure
of vote.

Act not to
apply to
Scotland.

Application
of Act as
herein
named to
Ireland.

of the superior court, declared not to have been duly elected, acts done by him in execution of such office before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of his being so declared not to have been duly elected.

24. Where, upon a petition the election of any person to an office has been declared void, and no other person has been declared elected in his room, a new election shall forthwith be held to supply the vacancy in the same manner as in the case of an extraordinary vacancy in the office; and for the purposes of any such new election any duties to be performed by a mayor, alderman, or any officer, shall, if such mayor, alderman, or officer has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

25. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving shall be excluded.

26. No person who has voted at an election by ballot shall in any proceeding to question the election be required to state for whom he has voted.

27. This Act shall not apply to Scotland.

28. This Act shall apply to Ireland; provided as follows:

1. "The superior court" means the Court of Common Pleas at Dublin:
2. "Borough" means a place for the time being subject to the provisions of the Act of the third and fourth of Her Majesty, chapter one hundred and eight, intituled, "An Act for the regulation of Municipal Corporations in Ireland," the Act of the ninth of George the Fourth, chapter eighty-two, the Towns Improvement (Ireland) Act, 1854, or of any local and personal act providing for the election of commissioners in any towns or places for purposes similar to the purposes of the said acts:
3. "Office" means either of the offices of mayor, alderman, councillor, commissioner, municipal commissioner, town commissioner, township commissioner, or assessor, of any borough:
4. "Town clerk" includes a clerk to commissioners:
5. "Borough rate or fund" includes any rate, fund, or assessment out of which the expenses of any election to an office in a borough may be defrayed:
6. "County court" means a civil bill court:
7. "Register" has the same meaning as the term "Register of Voters" in Part II. of the First Schedule to the Ballot Act, 1872, as applied to Ireland:
8. "One of Her Majesty's Principal Secretaries of State"

shall be construed to mean the Chief Secretary to the Lord Lieutenant of Ireland for the time being: 35 & 36 Vict
c. 90.

9. Petitions questioning the election of any person to any office at an election for a borough or ward on the grounds set forth in section 12 of this Act may be presented to the court as defined by the Local Government (Ireland) Act, 1871, and the same shall be presented and tried in the manner and subject to the provisions of the said Act relating to controverted elections as the same are modified by this Act; and the terms "election court" or "court" and "prescribed" in this Act shall be construed to have the same meanings respectively in the terms "court" and "prescribed" in the said Act:
10. Where under the provisions of this Act any general rules may be made, the same shall be made by the court in the manner and subject to the provisions of section 21 of the Local Government (Ireland) Act, 1871:
11. Sections 13 and 14, sub-sections 1, 2, and 3 of section 15, and sub-sections 1 and 2 of section 20, shall not extend or apply to Ireland. Repeal of
Acts as in
Schedule.
29. The Acts mentioned in the Schedule to this Act are repealed to the extent therein mentioned; but such repeal shall not affect the validity or invalidity of anything already done or suffered, or any offence already committed, or any remedy or proceeding in respect therefore, or the proof of any past act or thing.

SCHEDULE.

ACTS REPEALED.

- 5 & 6 Will. 4. c. 76, ss. 54 to 56, both inclusive.
 22 Vict. c. 35, ss. 9 to 14 both inclusive.
 3 & 4 Vict. c. 108, ss. 90, 91.

THE MUNICIPAL ELECTIONS ACT, 1875.

38 & 39 Vict. c. 40.

38 & 39 Vict. c. 40. **An Act to amend the Law regulating Municipal Elections (19th July 1875).**

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows; (that is to say,)

A.D. 1875.

1. The following provisions shall be enacted and apply to nominations at all municipal elections of councillors, auditors, and assessors after the passing of this Act :

Provisions applicable to municipal elections.

1. Nine days at least before any such election the town clerk shall prepare, sign, and publish a notice in the form No. 1, set forth in the first Schedule to this Act, or to the like effect, by causing the same to be placed on the door of the Town Hall, and in some conspicuous parts of the borough or ward for which any such election is to be held.

2. At any such election every candidate shall be nominated in writing; the writing shall be subscribed by two enrolled burgesses of such borough or ward as proposer and seconder, and by eight other enrolled burgesses of such borough or ward as assenting to the nomination. Each candidate shall be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more. Every person nominated shall be enrolled on the burgess roll of the borough, or a person whose name is inserted in the separate list at the end of the burgess roll, as provided by section three of the Act thirty-two and thirty-three Vict. chapter fifty-five, and shall be otherwise qualified to be elected. The nomination paper shall state the surname and other names of the person nominated, with his place of abode and description, and shall be in the form No. 2. set forth in the First Schedule to this Act, or to the like effect. And the Town Clerk shall provide nomination papers, and shall supply any en-

rolled burgess with as many nomination papers as may be required, and shall, at the request of any such person, fill up a nomination paper in manner prescribed by this Act. 38 & 39 Vict.
c. 40.

3. Every nomination paper subscribed as aforesaid shall be delivered by the candidate himself, or his proposer or seconder, to the Town Clerk, seven days at least before the day of election, and before five o'clock in the afternoon of the last day on which any such nomination paper may by law be delivered; the Town Clerk shall forthwith send notice of such nomination to each person nominated. The mayor shall attend at the Town Hall on the day next after the last day for the delivery of nominations to the Town Clerk between the hours of two and four in the afternoon, and shall decide on the validity of every objection made to a nomination paper, such objection to be made in writing. The candidate nominated by each nomination paper, and one other person, appointed by or on behalf of the candidate as hereinafter mentioned, and no person other than aforesaid, shall, except for the purpose of assisting the mayor, be entitled to attend such proceedings, and each candidate and the person appointed by him shall, during the time appointed for the attendance of the mayor for the purposes of this section, have respectively power to object to the nomination paper of every person nominated at the same election. The decision of the mayor, which shall be given in writing, shall, if disallowing any objection to a nomination paper, be final, but if allowing the same shall be subject to reversal on petition questioning the election or return. The appointment by or on behalf of candidates of persons as aforesaid shall be made in writing under the hand of the candidate, or, in case he is absent from the United Kingdom, then under the hand of his proposer or seconder, and shall be delivered to the Town Clerk before five o'clock in the afternoon of the last day on which nomination papers may by law be delivered.

The Town Clerk shall at least four days before the day of election cause the surnames and other names of all persons duly nominated, with their respective places of abode and descriptions, and the names of the persons subscribing their respective nomination papers as proposers and seconders, to be printed and placed on the door of the Town Hall, and in some conspicuous parts of the borough or ward for which such election is to be held.

4. Section eight of the Act of twenty-second Victoria,

38 & 39 Vict.
c. 40.

chapter thirty-five, so far as the same is now in force, shall apply to nominations of councillors, auditors, and assessors, duly made and allowed under this Act.

5. Section three of the Ballot Act, 1872, shall apply to nomination papers under this Act, and so applied, the word "returning officer" shall be taken to include town clerk in reference to the delivery of such nomination papers.

Candidates
out of United
Kingdom in-
eligible.

2. The nomination of a person who is absent from the United Kingdom shall be void, unless his written consent given within one month of the day of his nomination before two witnesses be produced at the time of his nomination.

Mayor to
appoint
officers for
taking the
poll.

3. At any municipal election of councillors, auditors, or assessors, the power and duty of the mayor, under section twenty of the Ballot Act of 1872, to provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, shall (save as to the appointment of the alderman as returning officer for any ward) extend to the appointment of officers for taking the poll and counting the votes recorded at such election.

Amendment
of law.

4. The provisions contained in rules 16 and 19 of the first schedule to the Ballot Act, 1872, shall not apply to any such election, but the mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor shall be necessary for effectually taking the poll at such election in other respects in the manner provided by the Ballot Act, 1872. Where more candidates are nominated than there are vacancies to be supplied, the mayor shall at least four days before the day of election, give such public notice as may be required by law of the situation, division, and allotment of polling places for taking the poll at any municipal election, and of the description of persons entitled to vote thereat and at the several polling stations.

Conclusive-
ness of
burgess
roll.

5. At any municipal election a person shall not be entitled to sign or subscribe any nomination paper, or to vote, unless his name is on the burgess roll for the time being in force* in the borough, or on the ward list for the time being in force for the ward, for which such election shall be held; and every person whose name is on such burgess roll or ward list, as the case may be, shall be entitled to sign or subscribe any nomination paper, and to demand and receive a ballot paper, and to vote; provided that nothing in this section shall entitle any person to do any of the acts aforesaid who is prohibited from doing such acts or any of them by law, or relieve such person from any penalties to which he may be liable for doing any such act.

* Which burgess roll, see 41 & 42 Vict. c. 26, ss.33—34.

6. At the poll at any election of auditors and assessors one ballot paper only shall be used by any person voting. In such ballot paper the names of the candidates for the respective offices shall be separate, and distinguished so as to show the office for which they are respectively candidates, and the ballot paper shall be in the Form No. 3 set forth in the First Schedule to this Act or to the like effect, and the provisions of the Ballot Act, 1872, shall at any such election be altered and varied accordingly; provided always, that in counting the votes every such ballot paper shall be deemed to be a separate ballot paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

38 & 39 Vict.
c. 40.

One poll to
be taken for
auditors and
assessors.

7. Where more candidates are nominated at any municipal election than there are vacancies to be filled at such election, any of such candidates may withdraw from his candidature by notice signed by him and delivered to the town clerk not later than two o'clock in the afternoon of the day next after the last day for the delivery of nomination papers to the town clerk; provided that such notices shall take effect in the order in which they are delivered to the town clerk, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of the vacancies to be filled.

Withdrawal
of candidates.

8. Any notice required by law to be given or published by the mayor or other returning officer or town clerk in connexion with any municipal election may, as to auditors and assessors, be comprised in one notice, and with respect to the election of councillors in any borough divided into wards, may comprise the matter necessary to such notice for the several wards in the borough, and it shall not be necessary to issue a separate notice for each ward.

Notices by
mayor or
town clerk
may comprise
the several
wards of
borough.

9. Section eleven of the Act sixteenth and seventeenth Victoria, chapter seventy-nine, shall be read as if fourteen days were therein inserted instead of ten days, and the day for holding the election in the case of any extraordinary vacancy in the office of councillor, auditor, or assessor in any borough (whether such borough shall be divided into wards or not) shall be fixed by the mayor.

Time of
holding election on ex-
traordinary
vacancies.

10. The town council of any borough may by order divide any such borough or any ward or wards of such borough into polling districts in such manner as they may think most convenient for taking the votes of the burgesses at a poll, and the overseers shall, so far as practicable, make out the lists of burgesses in such manner as to divide the names in conformity with such polling districts.

Power to
town council
to divide
wards into
polling
places as
they may
think fit.

11. In reckoning time for the purpose of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public holiday, fast, or public thanksgiving, shall be excluded.

Computation
of time under
the Act.

12. The several Acts of Parliament mentioned in the

Repeal of

38 & 39 Vict. c. 40. Second Schedule to this Act shall be repealed to the extent specified in the third column of such schedule, but such repeal shall not affect the validity or invalidity of anything already done or suffered, or any remedy or proceeding in respect thereof, or the proof of any past act or thing.

parts of
Acts in
Second
Schedule.
Act to be
construed
with Muni-
cipal Corpo-
ration Acts.

13. This Act shall, as far as consistent with the tenor thereof, be construed as one with the Act fifth and sixth William the Fourth, chapter seventy-six, and the Acts amending the same, and the Acts for the time being in force relating to elections of councillors, auditors, and assessors in boroughs.

Short title

14. This Act may for all purposes be cited as "The Municipal Elections Act, 1875."

Duration of
Act.

15. This Act shall continue in force for so long only as the Ballot Act, 1872, continues in force.

FIRST SCHEDULE.

FORM NO. 1.

NOTICE.

A.D., 1875. Borough of . Election of [Councillors,
[or Auditors, or Assessors, as the case may be] for the
Ward or several Wards of the]
Borough.

Take Notice.

1. That an election of [*here insert the number of Councillors, Auditors, or Assessors, as the case may be*] for the [Ward or several Wards of the] said Borough will be held on the day of

2. Candidates must be nominated by writing, subscribed by two enrolled burgesses as proposer or seconder, and by eight other enrolled burgesses as assenting to the nomination.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names of the person nominated, with his place of abode and description, and may be in the following form, or to the like effect:

(Set out Form No. 2.)

4. Each candidate must be nominated by a separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [*or ward*], but no more.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of misdemeanor, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

THE MUNICIPAL ELECTIONS ACT, 1875.

ci

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, to the town clerk at his office before five o'clock in the afternoon of day the day of next. 38 & 39 Vict.
c. 40.

7. The Mayor will attend at the Town Hall on day the day of , from two to four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any enrolled burgess, fill up a nomination paper.

Dated this day of 18 .

A.B., Town Clerk.

FORM NO. 2.

NOMINATION PAPER.

Borough of . Election of Councillors, Auditors, or Assessors for ward in the said borough (or the said borough), to be held on the day of 18 .

We, the undersigned, being respectively enrolled burgesses, hereby nominate the following person as a candidate at the said election.

| Surname. | Other Names. | Abode. | Description. |
|----------|--------------|--------|--------------|
| | | | |

(Signed) A.B. of*
C.D. of*

We, the undersigned, being respectively enrolled burgesses, do hereby assent to the nomination of the above person as a candidate at the said election.

Dated this day of 18 .

(Signed) E.F. of*
G.H. of*
I.J. of*
K.L. of*
M.N. of*
O.P. of*
Q.R. of*
S.T. of*

* The number on the Burgess Roll of the Burgess subscribing, with the situation of the property in respect of which he is enrolled on the Burgess Roll.

38 & 39 Vict.
c. 40.

FORM NO. 3.

BALLOT PAPER.

Form of Front of Ballot Paper.
For Auditors.

| | | | |
|---|---|--|--|
| Counterfoil. No. <i>Note.</i> —The Counterfoil is to have a number to correspond with that on the back of the Ballot Paper. | 1 | CADE. (John Cade, of 22, Wellclose Place, Accountant.) | |
| | 2 | JOHNSON. (Charles Johnson, of 7, Albion St., Gentleman.) | |
| | 3 | THOMPSON. (William Thompson, of 14, Queen St., Silversmith.) | |

For Revising Assessor.

| | | |
|---|---|--|
| 1 | BACON. (Charles Bacon, of 29, New Street, Solicitor.) | |
| 2 | BYRON. (James Byron, of 45, George Street, Commission Agent.) | |
| 3 | WILSON. (George Wilson, of 22, Hanover Square, Gentleman.) | |

Form of Back of Ballot Paper.

No. Election of Auditors [*or* Assessors] for the Borough
of , to be held on the day of 18 .

The Number on the back of the Ballot Paper is to correspond with that on the Counterfoil.

THE MUNICIPAL ELECTIONS ACT, 1875.

ciii

SECOND SCHEDULE.

38 & 39 Vict.
c. 40.

| Session and Chapter. | Title of Act. | Extent of Repeal. |
|--------------------------|--|---|
| 5 & 6 Will. 4. c. 76. | An Act to provide for the regulation of Municipal Corporations in England and Wales. | So much of section 47 as relates to the fixing of the day of election by the alderman. |
| 22 Vict. c. 35. | The Municipal Corporation Act, 1859. | Sections 5, 6, 7, and Schedules. |
| 32 & 33 Vict. c. 55. | An Act to shorten the term of residence required as a qualification for the Municipal Franchise, and to make provision for other purposes. | Sections 6 and 7. |
| 35 & 36 Vict. c. 33. | The Ballot Act, 1872. | Directions in the Schedule to the Act as to the form of nomination papers at Municipal Elections. |

A. D. 1875

THE PARLIAMENTARY ELECTIONS
(RETURNING OFFICERS) ACT,
1875.

38 & 39 Vict. c. 84.

An Act to regulate the Expenses and to control
the Charges of Returning Officers at Parliamentary
Elections (13th August 1875).

WHEREAS it is expedient to amend the law relating to the expenses and charges of returning officers at parliamentary elections :

Construction
of Act.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority, of the same as follows :

1. The Ballot Act, 1872, as modified by this Act, and this Act shall be construed as one Act.

This Act shall apply only to parliamentary elections.

Payments to
returning
officers.

2. The returning officer at an election shall be entitled to his reasonable charges, not exceeding the sums mentioned in the first schedule to this Act, in respect of services and expenses of the several kinds mentioned in the said schedule, which have been properly rendered or incurred by him for the purposes of the election.

The amount of such charges shall be paid by the candidates at the election in equal several shares, or where there is only one candidate, by such candidate. If a candidate is nominated without his consent, the persons by whom his nomination is subscribed shall be jointly and severally liable for the share of the charges for which he would be liable if he were nominated with his consent.

A returning officer shall not be entitled to payment for any other services or expenses, or at any greater rates than as in the said schedule mentioned, any law or usage to the contrary notwithstanding.

Returning
officer may
require de-
posit or
security.

3. The returning officer, if he think fit, may, as hereinafter provided, require security to be given for the charges which may become payable under the provisions of this Act in respect of any election.

The total amount of the security which may be required in respect of all the candidates at an election shall not in any

case exceed the sums prescribed in the third schedule to this 38 & 39 Vict.
Act. c. 84

Where security is required by the returning officer it shall be apportioned and given as follows; viz.,

- (1.) At the end of the two hours appointed for the election the returning officer shall forthwith declare the number of the candidates who then stand nominated, and shall, if there be more candidates nominated than there are vacancies to be filled up, apportion equally among them the total amount of the required security :
- (2.) Within one hour after the end of the two hours aforesaid, security shall be given, by or in respect of each candidate then standing nominated, for the amount so apportioned to him :
- (3.) If in the case of any candidate security is not given or tendered as herein mentioned, he shall be deemed to be withdrawn within the provisions of the Ballot Act, 1872 :
- (4.) A tender of security in respect of a candidate may be made by any person :
- (5.) Security may be given by deposit of any legal tender or of notes of any bank being commonly current in the county or borough for which the election is held, or, with the consent of the returning officer, in any other manner :
- (6.) The balance (if any) of a deposit beyond the amount to which the returning officer is entitled in respect of any candidate shall be repaid to the person or persons by whom the deposit was made.

4. Within twenty-one days after the day on which the return is made of the persons elected at the election, the returning officer shall transmit to every candidate or other person from whom he claims payment either out of any deposit or otherwise of any charges in respect of the election, or to the agent for election expenses of any such candidate, a detailed account showing the amounts of all the charges claimed by the returning officer in respect of the election, and the share thereof which he claims from the person to whom the account is transmitted. He shall annex to the account a notice of the place where the vouchers relating to the account may be seen, and he shall at all reasonable times and without charge allow the person from whom payment is claimed, or any agent of such person, to inspect and take copies of the vouchers.

The accounts of a returning officer may be taxed.

The returning officer shall not be entitled to any charges which are not duly included in his account.

If the person from whom payment is claimed objects to an part of the claim, he may, at any time within fourteen days from the time when the account is transmitted to him, apply

38 & 39 Vict. c. 84. to the court as defined in this section for a taxation of the account, and the court shall have jurisdiction to tax the account in such manner and at such time and place as the court thinks fit, and finally to determine the amount payable to the returning officer and to give and enforce judgment for the same as if such judgment were a judgment in an action in such court, and or without costs at the discretion of the court.

The court for the purposes of this Act shall be in the city of London the Lord Mayor's Court, and elsewhere in England the County Court, and in Ireland the Civil Bill Court, having jurisdiction at the place of nomination for the election to which the proceedings relate.

The court may depute any of its powers or duties under this Act to the registrar or other principal officer of the court.

Nothing in this section shall apply to the charge of the returning officer for publication of accounts of election expenses.

Claims
against a
returning
officer.

5. Every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election, except for publication of accounts of election expenses, shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

Where application is made for taxation of the accounts of a returning officer, he may apply to the court as defined in this Act to examine any claim transmitted to him by any person in pursuance of this section, and the court after notice given to such person, and after hearing him, and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs, and the determination of the court shall be final for all purposes, and as against all persons.

Use of ballot
boxes, &c.
provided for
municipal
elections.

6. In any case to which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the court, upon taxation of his accounts, shall have regard to the provisions of this section.

Notices to be
given by
returning
officer.

7. There shall be added to every notice of election to be published under the provisions of the Ballot Act, 1872, the notification contained in the second schedule to this Act with respect to claims against returning officers.

Saving of
the univer-
sities.

8. Nothing in this Act shall apply to an election for any university or combination of universities.

Commence-
ment and

9. This Act shall come into operation on the first day of October one thousand eight hundred and seventy-five, and con

tinue in force until the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine.

10. This Act may be cited for all purposes as the "Parliamentary Elections (Returning Officers) Act, 1875."

This Act shall not apply to Scotland.

38 & 39, Vict.
c. 84.
duration
of Act.
Short title.
Not to apply
to Scotland.

SCHEDULES.

FIRST SCHEDULE.

CHARGES OF RETURNING OFFICERS.

The following are the maximum charges to be made by the returning officer, but the charges are in no case to exceed the sums actually and necessarily paid or payable.

PART I.—COUNTIES AND DISTRICT OR CONTRIBUTORY BOROUGHES.

This Part of this Schedule applies to an election for a county; or for either of the boroughs of Aylesbury, Cricklade, Monmouth, East Retford, Stroud, and New Shoreham, or for any borough or burgh consisting of a combination of separate boroughs, burghs, or towns.

| | £ | s. | d. | |
|---|---|----|----|---|
| For preparing and publishing the notice of election | 2 | 2 | 0 | |
| For preparing and supplying the nomination papers | 1 | 1 | 0 | |
| For travelling to and from the place of nomination, or of declaring the poll at a contested election, per mile. | 0 | 1 | 0 | |
| For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings. | | | | The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station. |

33 & 39 Vict.
c. 84.

| | £ | s. | d. |
|---|---|----|----|
| For constructing a polling station, with its fittings and compartments, in England. | 7 | 7 | 0 |
| And in Ireland the sum or sums payable under the provisions of the 13th and 14th Victoria, chap. 68, and 35th and 36th Victoria, chap. 33. | | | |
| In Ireland the returning officer shall use a court house where one is available as a polling station, and his maximum charge for using and fitting the same shall in no case exceed three pounds three shillings. | | | |
| For each ballot box required to be purchased. | 1 | 1 | 0 |
| For the use of each ballot box, when hired | 0 | 5 | 0 |
| For stationery at each polling station. | 0 | 10 | 0 |
| For printing and providing ballot papers, per thousand. | 1 | 10 | 0 |
| For each stamping instrument. | 0 | 10 | 0 |
| For copies of the register. | The sums payable by statute for the necessary copies. | | |
| | 3 | 3 | 0 |
| For each presiding officer. | | | |
| For one clerk at each polling station where not more than 500 voters are assigned to such station. | 1 | 1 | 0 |
| For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the first 500 assigned to such polling station. | 1 | 1 | 0 |
| For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors. | 1 | 1 | 0 |
| For making the return to the clerk of the Crown. | 1 | 1 | 0 |
| For the preparation and publication of notices (other than the notice of election). | Not exceeding for the whole of such notices 20 <i>l.</i> , and 1 <i>l.</i> for every additional 1,000 electors above 3,000. | | |

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38 & 39 Vict.
c. 84

| | £ | s. | d. |
|--|---|----|----|
| For conveyance of ballot boxes from the polling stations to the place where the ballot papers are to be counted, per mile. | 0 | 1 | 0 |
| For professional and other assistance in and about the conduct of the election. | In a contested election not exceeding 25 <i>l.</i> , and an additional 3 <i>l.</i> for every 1,000 registered electors or fraction thereof above 3,000 and up to 10,000, and 2 <i>l.</i> for every 1,000 or fraction thereof above 10,000. In an uncontested election, one fifth of the above sums. | | |
| For travelling expenses of presiding officers and clerks, per mile. | 0 | 1 | 0 |
| For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate. | 2 | 2 | 0 |
| For all other expenses. | In a contested election, not exceeding 10 <i>l.</i> , and an additional 1 <i>l.</i> for every 1,000 electors or fraction thereof above 1,000. In an uncontested election, nil. | | |

NOTE.—*Travelling expenses are not to be allowed in the case of any person unless for distances exceeding two miles from the place at which he resides.*

38 & 39 Vict.
c. 64.

PART II.—BOROUGHES.

This Part of the Schedule applies to all boroughs not included in Part I. of this Schedule.

| | £ | s. | d. |
|---|---|----|----|
| For preparing and publishing the notice of election. | 2 | 2 | 0 |
| For preparing and supplying the nomination papers. | 1 | 1 | 0 |
| For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings. | The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station. | | |
| In England, for constructing a polling station, with its fittings and compartments, not exceeding two in number. | 7 | 7 | 0 |
| For each compartment required to be constructed, when more than two be used. | 1 | 1 | 0 |
| For the use of each compartment hired, when more than two are used. | 0 | 5 | 0½ |
| And in Ireland, in lieu of the charges payable in respect of the foregoing last three services, the sum or sums payable under the provisions of 13th and 14th Victoria, chap. 68, and 35th and 36th Victoria, chap. 33. | | | |
| For each ballot box required to be purchased. | 1 | 1 | 0 |
| For the use of each ballot box, when hired | 0 | 5 | 0 |
| For stationery at each polling station. | 0 | 10 | 0 |
| For printing and providing ballot papers, per thousand. | 1 | 10 | 0½ |
| For each stamping instrument. | 0 | 10 | 0 |
| For copies of the register. | The sums payable by statute for the necessary copies. | | |
| For each presiding officer. | 3 | 3 | 0 |
| For one clerk at each polling station where not more than 500 voters are assigned to such station. | 1 | 1 | 0 |

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38 & 39 Vict
c. 84.

| | £ | s. | d. |
|---|---|----|----|
| For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the first 500 assigned to such station. | 1 | 1 | 0 |
| For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors. | 1 | 1 | 0 |
| For making the return to the clerk of the Crown. | 1 | 1 | 0 |
| For the preparation and publication of notices (other than the notice of election). | Not exceeding for the whole of such notices 10 <i>l.</i> , and 1 <i>l.</i> for every additional 1,000 electors above 1,000. | | |
| For professional and other assistance in and about the conduct of the election. | In a contested election, not exceeding 20 <i>l.</i> , an additional 2 <i>l.</i> for every 1,000 registered electors or fraction thereof of above 1,000 and up to 10,000 and 1 <i>l.</i> additional for every 1,000 or fraction thereof above 10,000. In an uncontested election one fifth of the above sum. | | |
| For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate. | 1 | 1 | 0 |
| For all other expenses | Not exceeding 10 <i>l.</i> , and an additional 1 <i>l.</i> for every 1,000 electors above the first 1,000. | | |

36 & 39 Vict.
c. 84.

NOTE to PARTS I. and II. of SCHEDULE I.

The above sums are the aggregate charges, the amount which is to be apportioned among the several candidates or other persons liable for the same.

SECOND SCHEDULE.

1. NOTIFICATION to be added to the NOTICE of ELECTION.

Take notice, that by the Parliamentary Elections (Returning Officers) Act, 1875, it is provided that every person having any claim against a returning officer for work, labour, material services, or expenses in respect of any contract made with him by or on behalf of the returning officer, for the purposes of an election (except for publications of account of election expenses), shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

THIRD SCHEDULE.

38 & 39 Vict.
c. 84

MAXIMUM AMOUNT OF SECURITY which may be required by a
RETURNING OFFICER.

| | County or District of Contribu- tory Borough. | Borough. |
|--|---|----------|
| | £ | £ |
| Where the registered electors do not exceed 1,000 | 150 | 100 |
| Where the registered electors exceed 1,000 but do not exceed 2,000 | 200 | 150 |
| Where the registered electors exceed 2,000 but do not exceed 4,000 | 275 | 200 |
| Where the registered electors exceed 4,000 but do not exceed 7,000 | 400 | 250 |
| Where the registered electors exceed 7,000 but do not exceed 10,000 | 550 | 300 |
| Where the registered electors exceed 10,000 but do not exceed 15,000 | 700 | 450 |
| Where the registered electors exceed 15,000 but do not exceed 20,000 | 800 | 500 |
| Where the registered electors exceed 20,000 but do not exceed 30,000 | 900 | 600 |
| Where the registered electors exceed 30,000 | 1,000 | 700 |

If at the end of the two hours appointed for the election, not more candidates stand nominated than there are vacancies to be filled up, the maximum amount which may be required is one fifth of the maximum according to the above scale.

THE PARLIAMENTARY ELECTIONS (METROPOLIS) ACT, 1878.

41 Vict. c. 4.

An Act to extend the Hours of Polling at Parliamentary Elections in the Metropolis.

(25th February, 1878)

Be it enacted by the Queen's most Excellent Majesty, and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Hours of
polling in
metropolitan
boroughs.

1. At every election held after the passing of this Act return a member or members to serve in Parliament for any the boroughs named in the schedule to this act, the poll, if taken shall commence at eight o'clock in the forenoon and be kept open until eight o'clock in the afternoon of the same day.

Short title.

2. This act may be cited as the Parliamentary Elections (Metropolis) Act, 1878.

SCHEDULE.

| | |
|-------------|----------------|
| London. | Hackney. |
| Westminster | Lambeth. |
| Chelsea. | Marylebone. |
| Finsbury. | Southwark. |
| Greenwich. | Tower Hamlets. |

THE PARLIAMENTARY AND MUNICIPAL REGISTRATION ACT, 1878.

41 & 42 Vict. c. 26.

An Act to amend the Law relating to the Registration of Voters in Parliamentary Boroughs and the enrolment of Burgesses in Municipal Boroughs, and relating to certain rights of voting and proceedings before and appeals from the Revising Barristers.

* * * * *

32. The register made up from revised list under the parliamentary registration acts, and this act of voters for any parliamentary borough shall come into operation on the first day of January next after the revision, and shall continue in operation for the year commencing with such first day of January.

Commence
ment and
duration of
parlia-
mentary
register.

33. The Burgess roll made up from revised lists under this act of burgesses for any municipal borough shall come into operation on the first day of November next after the revision, and shall continue in operation for the year commencing with such first day of November.

Commence-
ment and
duration of
burgess' roll.

34. For all the purposes of the Municipal Elections Act, 1875, relating to the qualification of candidates, or of persons signing or subscribing nomination papers, expressions referring to the burgess roll of the borough, or to the burgess roll or ward list for the time being in force in the borough or ward, shall for the purposes of any election to be held on or after the first day of November, in any year be deemed to refer to the new burgess roll or ward list to come into force on the first day of November in that year.

Certain ex-
pressions in
38 and 39
Vict. c. 40
to refer to
now burgess'
roll on ward
list.

THE PARLIAMENTARY ELECTIONS AND
CORRUPT PRACTICES ACT, 1879.

42 & 43 Vict. c 75.

An Act to amend and continue the Acts relating
to Election Petitions, and to the prevention of
Corrupt Practices at Parliamentary Elections.
(15th August, 1879.)

BE it enacted by the Queen's most Excellent Majesty, by
and with the advice and consent of the Lords Spiritual and
Temporal, and Commons, in this present Parliament assembled,
and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the "Parliamentary Elections
and Corrupt Practices Act, 1879."

Trial of election
petition to be con-
ducted before
two judges.

2. The trial of every election petition and the hearing of an
application for the withdrawal of an election petition shall be
conducted before two judges instead of one, and the Parlia-
mentary Elections Act, 1868, shall be construed as if for the
purpose of hearing and determining the petition at the trial
and of hearing and determining any application for the with-
drawal of an election petition two judges were mentioned, and
additional judges shall, if necessary, be placed on the rota
accordingly.

Every certificate and every report sent to the Speaker in
pursuance of the said Act shall be under the hands of both
judges, and if the judges differ as to whether the member
whose return or election is complained of was duly returned or
elected they shall certify that difference, and the member shall
be deemed to be duly elected or returned; and if the judges
determine that such member was not duly elected or returned,
but differ as to the rest of the determination, they shall cer-
tify that difference, and the election shall be deemed to be
void; and if the judges differ as to the subject of a report to
the Speaker, they shall certify that difference and make no
report on the subject on which they so differ.

Save as aforesaid, any order, act, application, or thing for
the purpose of the said Act may continue to be made or done
by, to, or before one judge. The expenses incident to the
sitting of two judges shall be defrayed as the expenses of one
judge are payable under the provisions of the said Act.

Continuance
of Acts.

3. This Act and the Acts mentioned in the schedule to this
Act, so far as they are unrepealed, shall continue in force until

THE PARLIAMENTARY ELECTIONS ACT, 1879.

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the thirty-first day of December one thousand eight hundred and eighty, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.

SCHEDULE.

ACTS REFERRED TO.

| Session and Chapter. | Title. |
|-----------------------|---|
| PART I. | |
| 17 & 18 Vict. c. 102 | The Corrupt Practices Prevention Act, 1854. |
| 21 & 22 Vict. c. 87 - | An Act to continue and amend the Corrupt Practices Prevention Act, 1854. |
| 26 & 27 Vict. c. 29 - | An Act to amend and continue the Law relating to Corrupt Practices at Elections of Members of Parliament. |
| PART II. | |
| 31 & 32 Vict. c. 125 | The Parliamentary Elections Act, 1868. |
| 32 & 33 Vict. c. 21 - | The Corrupt Practices Commission Expenses Act, 1869. |
| 34 & 35 Vict. c. 61 - | The Election Commissioners Expenses Act, 1871. |

"GENERAL RULES (PARLIAMENTARY)

M.T., 1868."

MADE BY

SIR SAMUEL MARTIN, KNIGHT, one of the BARONS of the EXCHEQUER; SIR JAMES SHAW WILLES, KNIGHT, one of the JUSTICES of the COMMON PLEAS; and SIR COLIN BLACKBURN, KNIGHT, one of the JUSTICES of the QUEEN'S BENCH; the JUDGES for the time being for the trial of ELECTION PETITIONS IN ENGLAND, pursuant to the Parliamentary Elections Act, 1868.

The presentation of an election petition shall be made by leaving it at the office of the master nominated by the Chief Justice of the Common Pleas, and such master or his clerk shall (if required) give a receipt, which may be in the following form:—

Received on the day of at the master's office a petition touching the election of A, B., a member for purporting to be signed by (*insert the names of Petitioners*).

C. D., Master's Clerk.

With the petition shall also be left a copy thereof for the master to send to the returning officer, pursuant to section 7 of the act.

II.

An election petition shall contain the following statements:—

1. It shall state the right of the petitioner to petition with in section 5 of the act.
2. It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

III.

The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the court or a judge.

IV.

The petition shall conclude with a prayer, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners.

V.

The following form, or one to the like effect, shall be sufficient :—
In the Common Pleas.

“The Parliamentary Elections Act, 1868.”

Election for [*state the place*] holden on the day of A.D.
The petition of A. of [or of A. of and B. of
as the case may be] whose names are subscribed.

1. Your petitioner A. is a person who voted [*or had a right to vote as the case may be*] at the above election [*or claims to have had a right to be returned at the above election, or was a candidate at the above election*]; and your petitioner B. [*here state in like manner the right of each petitioner.*]

2. And your petitioners state that the election was holden on the day of A.D. when A. B., C. D. and E. F. were candidates, and the returning officer has returned A. B. and C. D. as being duly elected.

3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely.*]

Wherefore your petitioners pray that it may be determined that the said A. B. was not duly elected or returned, and that the election was void [*or that the said E. F. was duly elected and ought to have been returned, or as the case may be.*]

(Signed) A.
 B.

VI.

Evidence need not be stated in the petition, but the court or a judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas and upon such terms as to costs and otherwise as may be ordered.

VII.

When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return, shall, six days before the day appointed for trial, deliver to the master and also to the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the master shall allow inspection and office copies of such

lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by the leave of the court or judge upon such terms as to amendment of the list, postponement of the inquiry and payment of costs as may be ordered.

VIII.

When the respondent in a petition under the act, complaining of an undue return and claiming the seat for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the fifty-third section of the act, such respondent shall six days before the day appointed for trial deliver to the master, and also at the address, if any, given by the petitioner, a list of objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the court or judge, upon such terms as to amendments of the list, postponement of the inquiry and payment of costs, as may be ordered.

IX.

With the petition, petitioners shall leave at the office of the master a writing signed by them or on their behalf, giving the name of some person entitled to practise as an attorney or agent in cases of election petitions whom they authorise to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address within three miles from the General Post Office at which notices addressed to them may be left; and if no such writing be left or address given, then notice of objection to the recognizances and all other notices and proceedings may be given by sticking up the same at the master's office.

X.

Any person returned as a member may at any time after he is returned send or leave at the office of the master a writing signed by him or on his behalf, appointing a person entitled to practise as an attorney or agent in cases of election petitions, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office, at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the master's office.

XI.

The master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

XII.

The master shall upon the presentation of the petition forthwith send a copy of the petition to the returning officer, pursuant to section 7 of the act, and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also of the name of the respondent's agent, and the address, if any, given as prescribed, and the returning officer shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the returning officer, shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

XIII.

The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

XIV.

Where the respondent has named an agent or given an address, the service of an election petition may be by delivery of it to the agent or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent unless a judge on an application made to him not later than five days after the petition is presented on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, including, when practicable, service upon an agent for election expenses, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

XV.

In case of evasion of service, the sticking up a notice in the office of the master of the petition having been presented stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service, if so ordered by a judge.

XVI.

The deposit of money by way of security for payment of costs, charges and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Parliamentary Elections Act, 1868, Security Fund," which shall be vested in and drawn upon from time to time by the chief justice of the common pleas for the time being, for the purposes for which security is required by the said act, and a bank-receipt or certificate for the same shall be forthwith left at the master's office.

XVII.

The master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

XVIII.

The recognizance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

XIX.

The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows :

Be it remembered that on the day of in the year of our Lord 18 , before me [*name and description*] came A. B., of [*name and description as above prescribed*] and acknowledged himself [*or severally acknowledged themselves*] to owe to our sovereign lady the queen the sum of one thousand pounds [*or the following*] sums (that is to say) the said C. D., the sum of £ , the said E. F., the sum of £ , the said G. H., the sum of £ , and the said J. K., the sum of £ to be levied on his [*or their respective*] goods and chattels, land and tenements, to the use of our said sovereign lady the queen, her heirs and successors.

The condition of this recognizance is that if [*here insert the names of all the petitioners, and if more than one add, or any of them*] shall well and truly pay all costs, charges and expenses, in respect of the election petition signed by him, [*or them*], relating to the [*here insert the name of the borough, or county*] which shall become payable by the said petitioner [*or petitioners, or any of them*] under the Parliamentary Elections Act, 1868, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

(Signed)

[*Signatures of sureties.*]

Taken and acknowledged by the above-named [*names of sureties*] on the day of at , before me,

C. D.

A justice of the peace [*or as the case may be*].

XX.

The recognizance or recognizances shall be left at the master's office, by or on behalf of the petitioner in like manner as before described for the leaving of a petition forthwith after being acknowledged.

XXI.

The time for giving notice of any objection to a recognizance under the 8th section of the act shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

XXII.

An objection to the recognizance must state the ground or grounds thereof, as that the sureties or any, and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

XXIII.

Any objection made to the security shall be heard and decided by the master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXIV.

Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the master or judge may think fit.

XXV.

If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 9th section of the said act, and the petition shall be at issue.

XXVI.

If by order made upon such summons an objection be allowed and the security be declared insufficient, the master or judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

XXVII.

The costs of hearing and deciding the objection made to the security given shall be paid as ordered by the master or judge, and in default of such order shall form part of the general costs of the petition.

XXVIII.

The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the master there be also left with the master an affidavit of the

XVII.

The master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

XVIII.

The recognizance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

XIX.

The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows :

Be it remembered that on the day of in the year of our Lord 18 , before me [*name and description*] came A. B., of [*name and description as above prescribed*] and acknowledged himself [*or severally acknowledged themselves*] to owe to our sovereign lady the queen the sum of one thousand pounds [*or the following*] sums (that is to say) the said C. D., the sum of £ , the said E. F., the sum of £ , the said G. H., the sum of £ , and the said J. K., the sum of £ to be levied on his [*or their respective*] goods and chattels, land and tenements, to the use of our said sovereign lady the queen, her heirs and successors.

The condition of this recognizance is that if [*here insert the names of all the petitioners, and if more than one add, or any of them*] shall well and truly pay all costs, charges and expenses, in respect of the election petition signed by him, [*or them*], relating to the [*here insert the name of the borough, or county*] which shall become payable by the said petitioner [*or petitioners, or any of them*] under the Parliamentary Elections Act, 1868, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

(Signed)

[*Signatures of sureties.*]

Taken and acknowledged by the above-named [*names of sureties*] on the day of at , before me,

C. D.

A justice of the peace [*or as the case may be*].

XX.

The recognizance or recognizances shall be left at the master's office, by or on behalf of the petitioner in like manner as before described for the leaving of a petition forthwith after being acknowledged.

XXI.

The time for giving notice of any objection to a recognizance under the 8th section of the act shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

XXII.

An objection to the recognizance must state the ground or grounds thereof, as that the sureties or any, and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

XXIII.

Any objection made to the security shall be heard and decided by the master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXIV.

Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the master or judge may think fit.

XXV.

If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 9th section of the said act, and the petition shall be at issue.

XXVI.

If by order made upon such summons an objection be allowed and the security be declared insufficient, the master or judge shall in such order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

XXVII.

The costs of hearing and deciding the objection made to the security given shall be paid as ordered by the master or judge, and in default of such order shall form part of the general costs of the petition.

XXVIII.

The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the master there be also left with the master an affidavit of the

sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the Court of Common Pleas, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows:—

In the Common Pleas.

“Parliamentary Elections Act, 1868.”

I, A. B. of [as in recognizance], make oath and say that I am seised or possessed of real [or personal] estate above what will satisfy my debts of the clear value of £

Sworn, &c.

XXIX.

The order of the master for payment of costs shall have the same force as an order made by a judge, and may be made a rule of the Court of Common Pleas, and enforced in like manner as a judge's order.

XXX.

The master shall make out the election list. In it he shall insert the name of the agents of the petitioners and respondent, and the addresses to which notices may be sent, if any. The list may be inspected at the master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said act, and headed “Parliamentary Elections Act, 1868.”

XXXI.

The time and place of the trial of each election petition shall be fixed by the judges on the rota, and notice thereof shall be given in writing by the master by sticking notice up in his office, sending one copy by the post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the sheriff, or in case of a borough having a mayor, to the mayor of that borough, fifteen days before the day appointed for the trial.

The sheriff or mayor, as the case may be, shall forthwith publish the same in the county or borough.

XXXII.

The sticking up of the notice of trial at the office of the master shall be deemed and taken to be notice in the prescribed manner within the meaning of the act, and such notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent as already directed.

XXXIII.

The notice of trial may be in the following form:—

"Parliamentary Elections Act, 1868."

Election petition of county [or borough] of
 Take notice, that the above petition [or petitions] will be tried
 at on the day of and on such other subsequent days
 as may be needful.
 Dated the day of .

By order,
 (Signed) A. B.,
 The master appointed under the above act.

XXXIV.

A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the sheriff or mayor, as the case may be, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the sheriff or mayor.

XXXV.

In the event of the judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

XXXVI.

No formal adjournment of the court for the trial of an election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded; and in the event of the judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by another judge.

XXXVII.

The application to state a special case may be made by rule in the Court of Common Pleas when sitting, or by a summons before a judge at chambers, upon hearing the parties.

XXXVIII.

The title of the court of record held for the trial of an election petition may be as follows:—

Court for the trial of an election petition for the [county
 of or borough of as may be] between petitioner and
 respondent.

And it shall be sufficient so to entitle all proceedings in that court.

XXXIX.

An officer shall be appointed for each court for the trial of an election petition, who shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assize.

Such officer may be called the registrar of that court. He by himself, or in case of need his efficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

XL.

[The reasonable costs of any witness shall be ascertained by the registrar of the court, and the certificate allowing them shall be under his hand].*

* Revoked, and a new rule substituted; see additional rules of 27th January, 1875, s. 5.

XLI.

The order of a judge to compel the attendance of a person as a witness may be in the following form:—

Court for the trial of an election petition for [complete the title of the court] the day of To A. B. [describe the person] You are hereby required to attend before the above court at [place] on the day of at the hour of [or forthwith, as the case may be] to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand,

A. B.

Judge of the said court.

XLII.

In the event of its being necessary to commit any person for contempt, the warrant may be as follows:—

At a court holden on at for the trial of an election petition for the county [or borough] of , before Sir Samuel Martin, knight, one of the barons of her majesty's court of exchequer, and one of the judges for the time being for the trial of election petitions in England, pursuant to "The Parliamentary Elections Act, 1868."

Whereas A. B. has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said A. B., for his said contempt to be imprisoned in the gaol for calendar months, and to pay to our lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid. And the court further orders that the sheriff of the said county [or as the case may be] and all constables and officers of the peace of any county or place where the said A. B. may be found, shall take the said A. B. into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence. And the court further orders the said gaoler to receive the said A. B. into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A. D.

Signed the day of

S. M.

XLIII.

Such warrant may be made out and directed to the sheriff or other person having the execution of process of the superior courts, as the case may be, and to all constables and officers of the peace of the county or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the person to whom it is directed, or any or either of them.

XLIV.

All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under "The Parliamentary Elections Act, 1868," as a judge at chambers in the ordinary proceedings of the superior courts, and such questions and matters shall be heard and disposed of by one of the judges upon the rota, if practicable, and if not, then by any judge at chambers.

XLV.

Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

Parliamentary Elections Act, 1868.

County [or borough] of
 Petition of [*state petitioners*], presented day
 of

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application. Dated this day of .

(Signed)

XLVI.

The notice of application for leave to withdraw shall be left at the master's office.

XLVII.

A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the returning officer, who shall make it public in the county or borough to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice:—

"Parliamentary Elections Act, 1868."

In the election petition for in which is petitioner and
 respondent.

Notice is hereby given that the above petitioner has on the day of _____ lodged at the master's office, notice of an application to withdraw the petition, of which notice the following is a copy—*(set it out.)*

And take notice that, by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the returning officer of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

XLVIII.

Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the master, of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application if in fact made at the hearing.

XLIX.

The time and place for hearing the application shall be fixed by a judge, and whether before the court of common pleas, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the master as herein-before provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the judge directs.

L.

Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 37 of the said act, shall be given by the party or person interested in the same manner as notice of an application to withdraw a petition; and the time within which application may be made to the court or a judge, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances, the court or a judge may allow.

LI.

If the respondent dies or is summoned to parliament as a peer of Great Britain by a writ issued under the great seal of Great Britain, or if the house of commons have resolved that his seat is vacant, any person entitled to be a petitioner under the act in respect of the election to which the petition relates, may give notice of the fact in the county or borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the returning officer, and a like copy with the master.

LII.

The manner and time of the respondent's giving notice to the court that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the master signed by the respondent six days before the day appointed for trial, exclusive of the day of leaving such notice.

LIII.

Upon such notice being left at the master's office, the master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the sheriff or mayor, as the case may be, who shall cause the same to be published in the county or borough.

LIV.

The time for applying to be admitted as a respondent in either of the events mentioned in the 38th section of the act shall be within ten days after such notice is given as herein-before directed, or such further time as the court or a judge may allow.

LV.

Costs shall be taxed by the master, or at his request, by any master of a superior court, upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of court ordering them to be paid; or, if payable by the order of a judge, then by making such order a rule of court in the ordinary way, and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the common pleas for the time being, upon a duplicate of the rule of court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the act, and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the court of common pleas.

LVI.

The master shall prepare and keep a roll properly headed for entering the names of all persons entitled to practise as attorney or agent in cases of election petitions, and all matters relating to elections before the court and judges, pursuant to the 57th section of the said act; which roll shall be kept and dealt with in all respects as the roll of attorneys of the court of common pleas, and shall be under the control of that court, as to striking off the roll and otherwise.

LVII.

The entry upon the roll shall be written and subscribed by the attorney or agent, or some attorney authorised by him in writing to sign on his behalf, who shall therein set forth the name, description and address in full.

LVIII.

The master may allow any person upon the roll of attorneys for the time being, and during the present year any person whose name, or the name of whose firm is in the Law List of the present year as a parliamentary agent to subscribe the roll and permission to subscribe the roll may be granted to any other person by the court or judge upon affidavit, showing the facts which entitle the applicant to practise as agent according to the principles, practice and rules of the house of commons in cases of election petitions.

LIX.

An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

LX.

No proceeding under "The Parliamentary Elections Act, 1868," shall be defeated by any formal objection.

LXI.

Any rule made or to be made in pursuance of the act, if made in Term time, shall be published by being read by the master in the court of common pleas, and if made out of Term, by a copy thereof being put up at the master's office.

Dated the 21st day of November, 1868.

| | |
|------------------|---|
| SAMUEL MARTIN. | x |
| J. S. WILLES. | x |
| COLIN BLACKBURN. | x |

*The Judges for the trial of Election Petitions
in England.*

Read in open court, Common Pleas,
the 23rd day of November, 1868.

**"ADDITIONAL GENERAL RULE
(PARLIAMENTARY), Dec. 1868."**

MADE BY

SIR SAMUEL MARTIN, KNIGHT, one of the BARONS of the EXCHEQUER; SIR JAMES SHAW WILLES, KNIGHT, one of the JUSTICES of the COMMON PLEAS, and SIR COLIN BLACKBURN, KNIGHT, one of the JUSTICES of the QUEEN'S BENCH; the JUDGES for the time being for the trial of ELECTION PETITIONS IN ENGLAND, pursuant to the Parliamentary Elections Act 1868.

That notice of the time and place of the trial of each election petition shall be transmitted by the master to the treasury, and to the clerk of the crown in chancery, and that the clerk of the crown in chancery shall, on or before the day fixed for the trial, deliver or cause to be delivered to the registrar of the judge who is to try the petition, or his deputy, the poll-books, for which the registrar or his deputy shall give, if required, a receipt. And that the registrar shall keep in safe custody the said poll-books until the trial is over, and then return the same to the crown office.

**SAMUEL MARTIN.
J. S. WILLES.
COLIN BLACKBURN,**

Dated the 19th day of December, 1868,

**"ADDITIONAL GENERAL RULES
(PARLIAMENTARY), March, 1868."**

MADE BY

The JUDGES FOR THE TIME BEING for the Trial of ELECTION PETITIONS in ENGLAND pursuant to "THE PARLIAMENTARY ELECTIONS ACT, 1868."

I.

All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges and expenses payable by the Petitioners pursuant to the 16th General Rule, made the 21st November, 1868, by the Judges for the trial of Election Petitions in England, shall be disposed of by the Court of Common Pleas or a Judge.

II.

Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges and expenses, be returned or otherwise disposed of as justice may require, by rule of the Court of Common Pleas or order of a Judge.

III.

Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Court or Judge may require.

V

The rule or order may direct payment either to the party in whose name the same is deposited or to any person entitled to receive the same.

V.

Upon such rule or order being made, the amount may be drawn for by the Chief Justice of the Common Pleas for the time being.

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VI.

The draft of the Chief Justice of the Common Pleas for the time being shall, in all cases, be a sufficient warrant to the Bank of England for all payments made thereunder.

Dated the 25th day of March, 1869.

SAMUEL MARTIN. x

J. S. WILLES, x

COLIN BLACKBURN. x

*The Judges for the trial of Election Petitions
in England.*

**"ADDITIONAL GENERAL RULES
(PARLIAMENTARY), Jan. 1875."**

MADE BY

The JUDGES for the time being for the Trial of ELECTION PETITIONS IN ENGLAND, Pursuant to "The Parliamentary Elections Act, 1868," for the More Effectual Execution of the said Act.

1. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the Registrar, stamped with the official seal. Such order and particular respectively shall be filed by the party obtaining the same.

2. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof.

3. The days mentioned in rules 7 and 8, and in any rule of court or Judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

4. When the last day for presenting petitions, or filing lists of votes or objections, under rules 7 and 8, or recognizances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

5. Rule 40 is hereby revoked, and in lieu thereof it is ordered that the amount to be paid to any witness whose expenses shall be allowed by the Judge shall be ascertained and certified by the Registrar; or in the event of his becoming incapacitated from giving such certificate, by the Judge.

6. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the

ADDITIONAL GENERAL RULES (PARLIAMENTARY.) CXXXV

events mentioned in the 38th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

Dated the 27th day of January 1875.

G. PIGOTT.

ROBT. LUSH.

GEORGE E. HONYMAN

*Judges for the time being on the rota for the trial
of Election Petitions in England.*

VI.

Evidence need not be stated in the petition, but the court of common pleas or a judge at chambers may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the court of common pleas, and upon such terms as to costs and otherwise as may be ordered.

VII.

When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the voters intended to be objected to, and of the heads of objection to each such vote and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the court of common pleas or a judge at chambers, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

VIII.

When the respondent in a petition under the act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 15th section of the act, sub-section 9, such respondent shall, six days before the day appointed for trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the court of common pleas or a judge at chambers, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

IX.

With the petition petitioners shall leave at the office of the master a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an attorney in the court of common pleas, whom they authorise to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the general post office, at which notices addressed to them may be left; and if no such writing be left or address given, then notice of objection to the recognisances, and all other notices and proceedings, may be given by sticking up the same at the master's office.

X.

Any person elected to any municipal office may at any time after he is elected send or leave at the office of the master a writing, signed by him or on his behalf, appointing a person entitled to practise as an attorney in the court of common pleas, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the general post office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the master's office.

XI.

The master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

XII.

The master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 13 of the act, sub-section (1), and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also of the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

XIII.

The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

XIV.

Where the respondent has named an agent or given an address, thy service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge at chambers on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

In case of evasion of service the sticking up a notice in the office of the master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Corrupt Practices Municipal Elections Act, 1872, Security Fund," which shall be vested in and drawn upon from time to time by the chief justice of the common pleas for the time being, for the purposes for which security is required by the said act, and a bank receipt or certificate for the same shall be forthwith left at the master's office.

The master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

The recognizance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.

XIX.

Be it remembered that on the _____ day of _____
in the year of our Lord 18____, before me [name and description] came
A. B., of [name and description as above prescribed] and acknowledged
himself [or severally acknowledged themselves] to owe to our sovereign
lady the queen the sum of five hundred pounds [or the following sums],
(that is to say) the said C. D. the sum of £____ the said E. F.
the sum of £____, the said G. H. the sum of £____

and the said *J. K.* the sum of £ _____ to be levied on his [or their respective] goods and chattels, land and tenements, to the use of our said sovereign lady the queen, her heirs and successors.

The condition of this recognizance is that if [there insert the names of all the petitioners, and if more than one, add or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [or them] relating to the [here insert the name of

the borough] which shall become payable by the petitioner [*or* petitioners, or any of them,] under the Corrupt Practices Municipal Elections Act, 1872 to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed,

Taken and acknowledged by the above-named [*Signature of sureties.*] on
the day of at before
me C. D.

A justice of the peace [*or as the case may be*].

XX.

The recognizances or recognizances shall be left at the master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

XXI.

The time for giving notice of any objection to a recognizance under the 13th section of the act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security exclusive of the day of service.

XXII.

An objection to the recognizances must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

XXIII.

Any objection made to the security shall be heard and decided by the master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXIV.

Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the master or judge may think fit.

XXV.

If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 13th section of the said act, and the petition shall be at issue.

XXVI.

If by order made upon such summons an objection be allowed and the security be declared insufficient, the master or judge shall in such

order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

XXVII.

The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the master or judge, and in default of such order shall form part of the general costs of the petition.

XXVIII.

The costs of hearing and deciding an objection upon the ground of insufficiency, of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the master there be also left with the master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorised to take, or before some person authorised to take affidavits in the court of common pleas, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows:

In the Common Pleas.

Corrupt Practices Municipal Elections Act, 1872.

I *A. B.* [*as in recognizance*] make oath and say that I am seised or possessed of real [*or personal*] estate above what will satisfy my debts, of the clear value of £

Sworn, &c.

XXIX.

The order of the master for payment of costs shall have the same force as an order made by a judge, and may be made a rule of the court of common pleas, and enforced in like manner as a judge's order.

XXX.

The master shall make out the municipal election list. In it he shall insert the name of the agent of the petitioners and respondent, and the addresses to which notices may be sent, if any. The list may be inspected at the master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said act, and headed "Municipal Election List."

XXXI.

The time of the trial of each municipal election petition shall be fixed by the election judges on the rota, or any one of them, who shall signify

the same to the master, and notice thereof shall be given in writing by the master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

XXXII.

The sticking up of the notice of trial at the office of the master shall be deemed and taken to be notice in the prescribed manner within the meaning of the act, and such notice shall not be vitiated by the miscarriage of or relating to the copy or copies thereof to be sent as already directed.

XXXIII.

The notice of trial may be in the following form :

Corrupt Practices Municipal Election Act, 1872.

Election Petition of

Borough of

Take notice that the above petition [*or* petitions] will be tried
at on the day of
and on such other subsequent days as may be needful.

Dated the day of

Signed by order,

A. B.,

The master appointed under the above act.

XXXIV.

A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

XXXV.

In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and from day to day.

XXXVI.

No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

XXXVII.

The application to state a special case may be made by rule in the Court of Common Pleas when sitting, or by summons before a judge at chambers, upon hearing the parties.

XXXVIII.

The title of the court held for the trial of a municipal election petition, may be as follows:—

"Court for the trial of a municipal election petition for the borough of [*or*

as may be] between
petitioner and
respondent,"

and it shall be sufficient so to entitle all proceedings in that court.

XXXIX.

An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

XL.

[The reasonable costs of any witness shall be ascertained by the registrar of the court, and the certificate allowing them shall be under his hand, unless the court shall otherwise order].*

XLI.

The order of the court to compel the attendance of a person as a witness may be in the following form:—

Court for the trial of a municipal election petition for [*complete*
the title of the court] the day of

To *A.B.* [*describe the person*]. You are hereby required to
attend before the above court at [*place*] on day of
at the hour of [*or forthwith, as the case*
may be], to be examined as a witness in the matter of the said
petition, and to attend the said court until your examination shall
have been completed.

As witness my hand, *A.B.*,

The barrister to whom the trial of the said petition
is assigned.

* Revoked, and a new rule substituted; see additional rules of 27th January, 1875, r. 5.

XLII.

In the event of its being necessary to commit any person for contempt, the warrant may be as follows:—

At a court holden on _____ at _____
for the trial of a municipal election, petition for the borough
of _____ before *A.B.*, one
of the barristers appointed for the trial of municipal election
petitions, pursuant to "The Corrupt Practices Municipal
Elections Act, 1872."

Whereas *C.D.* has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said *C.D.* for his said contempt to be imprisoned in the _____ gaol for _____ calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ _____, and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C.D.* may be found, shall take the said *C.D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C.D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Signed the

day of

*A.B.**A.B.*

XLIII.

Such warrant may be made out and directed to the sheriff or other person having the execution of process of the superior courts, as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

XLIV.

All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Corrupt Practices Municipal Elections Act, 1872, as a judge at chambers in the ordinary proceedings of the superior courts, and such questions and matters shall be heard and disposed of then by any judge at chambers.

XLV.

Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

Corrupt Practices Municipal Elections Act, 1872.

Borough of _____ day of _____
presented _____ Petition of [*state petitioner*]

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this _____ day of _____

(Signed)

XLVI.

The notice of application for leave to withdraw shall be left at the Master's office.

XLVII.

A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall make it public in the borough to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice :—

Corrupt Practices Municipal Elections Act, 1872.

In the Election Petition for _____ in which
_____ is petitioner and
respondent.

Notice is hereby given, that the above petitioner has on the _____ day of _____ lodged at the Master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out*].

And take notice that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

XLVIII.

Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice, in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

XLIX.

The time and place for hearing the application shall be fixed by a judge, and whether before the Court of Common Pleas, or before a judge as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as herein-before provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such times as the judge directs.

L.

Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 17, sub-section 5, of the said act, shall be given by the party or person interested in the same manner as a notice of an application made to the Court of Common Pleas or a judge at chambers by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the Court of Common Pleas or a judge at chambers may allow.

LI.

If the respondent dies, any person entitled to be a petitioner under the act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

LII.

The manner and time of the respondent's giving notice that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the Master signed by the respondents six days before the day appointed for trial exclusive of the day of leaving such notice.

LIII.

Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

LIV.

The time for applying to be admitted as a respondent in either of the events mentioned in the 18th section of the Act shall be within ten days after such notice is given as herein-before directed, or such further time as the Court of Common Pleas or a judge at chambers may allow.

LV.

Costs shall be taxed by the Master, or at his request by any Master of a superior court, upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of court ordering them to be paid; or, if payable by the order of a judge, then by making such order a rule of court in the ordinary way and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the Common Pleas for the time being, upon a duplicate of the rule of court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the Court of Common Pleas.

LVII.

An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient of all purposes.

LVIII.

No proceeding under the Corrupt Practices Municipal Elections Act, 1872, shall be defeated by any formal objection.

LVIII.

Any rule made or to be made in pursuance of the Act, if made in term time, shall be published by being read by the Master in the Court of Common Pleas, and if made out of term by a copy thereof being put up at the Master's office.

Dated the 20th day of November, 1872.

COLIN BLACKBURN.
H. S. KEATING.
A. CLEASBY.

The Judges for the time being on the rota for the trial of Election Petitions under the provisions of the Parliamentary Elections Act, 1868.

**ADDITIONAL GENERAL RULES (MUNICIPAL),
Dec. 1872."**

**FOR THE EFFECTUAL EXECUTION OF "THE CORRUPT
PRACTICES (MUNICIPAL ELECTIONS) ACT, 1872,"**

MADE BY

**The Honble. SIR COLIN BLACKBURN, KNIGHT, one of
the JUSTICES of the QUEEN'S BENCH; The Honble. SIR
HENRY SINGER KEATING, KNIGHT, one of the JUS-
TICES of the COMMON PLEAS: and the Honble. SIR
ANTHONY CLEASBY, KNIGHT, one of the BARONS of
the EXCHEQUER; the Judges for the time being on the
Rota for the Trial of ELECTION PETITIONS IN ENG-
LAND, pursuant to the Parliamentary Elections Act, 1868**

I.

All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges and expenses payable by the Petitioners pursuant to the 16th General Rule, made the 20th day of November, 1872, by the Judges for the trial of Election Petitions in England, shall be disposed of by the Court of Common Pleas or a Judge at Chambers.

II.

Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges and expenses, be returned or otherwise disposed of as justice may require, by Rule of the Court of Common Pleas or order of a Judge at Chambers.

III.

Such Rule or Order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court of Common Pleas or Judge at Chambers may require.

IV.

The Rule or Order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

V.

Upon such Rule or Order being made, the amount may be drawn by the Chief Justice of the Common Pleas for the time being.

VI.

The draft of the Chief Justice of the Common Pleas for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

VII.

The Barrister engaged may appoint a proper person to act as Crier and Officer of the Court.

The Shorthand writer to attend at the trial of a Petition shall be the Shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the Notice of Trial to the said Shorthand writer to the House of Commons.

COLIN BLACKBURN.

H. S. KEATING.

A. CLEASBY.

Judges for the time being on the rota for the trial of Election Petitions in England pursuant to the Parliamentary Elections Act, 1863.

Dated the 10th day of December, 1872.

“ ADDITIONAL GENERAL RULES (MUNICIPAL)

Jan. 1875.”

MADE BY

The JUDGES for the time being for the Trial of ELECTION PETITIONS IN ENGLAND, for the More Effectual Execution of “ The Corrupt Practices (Municipal Elections) Act 1872.”

1. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the master, and the same shall be produced at the trial by the registrar, stamped with the official seal. Such order and particular respectively shall be filed by the party obtaining the same.

2. The petitioner or his agent shall, immediately after notice of the presentation of a petition, and of the nature of the proposed security shall have been served, file with the master an affidavit of the time and manner of service thereof.

3. The days mentioned in rules 7 and 8, and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

4. When the last day for presenting petitions, or filing lists of voter or objections, under rules 7 and 8, or recognizances, or any other matters required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

5. Rule 40 is hereby revoked, and in lieu thereof it is ordered that the amount to be paid to any witness whose expenses shall be allowed by the barrister trying the petition shall be ascertained and certified by the registrar; or in the event of his becoming incapacitated from giving such certificate, by the barrister.

6. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 18th section of the act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

7. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the Court of Common Pleas or a judge may either declare the election void or direct the trial to proceed. Notice of such order shall be forthwith given by the master to the town clerk, and if the election be declared void the office shall be deemed to be vacant from the first day (not being a *dies non*) after the date of such order.

The court or judge may also make such order as to costs as may be just.

Dated the 27th day of January 1875.

G. PIGOTT.
ROBT. LUSH.
GEORGE E. HONYMAN.

*Judges for the time being on the rota for the
trial of Election Petitions in England.*

*Scrutiny Lists (Form of).**

In the High Court of Justice,

Common Pleas Division,

Parliamentary Elections Act, 1868.

Borough of

In the matter of the Petition by A. B. petitioner,

and

C. D., respondent.

The following is the list of voters who voted for C. D. at the last election for the borough of and whose votes are intended to be objected to by and on behalf of the Petitioner, with the several heads of objection distinguishable against the names of such voters.

CLASS 1.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|--|
| | | The votes of each of these voters will be objected to on the ground that before, during or after the said last election for the borough of such voter was guilty of bribery within the meaning of the statute 17 & 18 Vict. c. 102, s. 2. |

* NOTE.—The forms given are applicable to scrutineers arising out of Parliamentary Elections; they may easily be adapted to the case of Municipal Elections.

APPENDIX.

CLASS 2.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|---|
| | | <p>The votes of each of these voters will be objected to on the ground that he did before, during and after the last election for the said borough of by himself or other persons on his behalf, receive, agree or contract for money or some other valuable consideration or place or employment, for voting or agreeing to vote for the said respondent at the said election, or for refraining, or agreeing to refrain, or having refrained from voting for the said petitioner at the said election.</p> |

CLASS 3.

| Register Number. | Name of the Voter | Grounds of Objection. |
|------------------|-------------------|--|
| | | <p>The vote of each of these voters will be objected to on the ground that he was guilty of corrupt treating at the said election in order to induce voters to vote at the said election, or for having voted thereat for the said respondent, or for refraining, or agreeing to refrain, or having refrained from voting for the said petitioner.</p> |

FORMS.

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CLASS 4.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|--|
| | | The votes of each of these voters will be objected to on the ground that he did corruptly before, during or after the said election accept meat, drink, &c., given or provided by the said respondent, by himself, or by or with other persons, or on his behalf, or to the giving and providing of which the said respondent, or other persons on his behalf, did wholly or in part pay, and which said meat, drink, &c., were given on account of the said voters voting, or agreeing to vote, or having voted for the said respondent, or for refraining or agreeing to refrain, or having refrained from voting for the said petitioner. |

CLASS 5.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|--|
| | | The votes of each of these voters will be objected to, on the ground that he intimidated and unduly influenced, compelled or induced certain voters to vote at the said election for the said respondent, or to refrain from voting for the said petitioner. |

APPENDIX.

CLASS 6.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|--|
| | | The votes of each of these voters will be objected to on the ground that he was unduly influenced, intimidated, compelled or induced to vote at the said last election for the said respondent, or to refrain from voting for the said petitioner. |

CLASS 7.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|---|
| | | The votes purporting to be the votes of each of these voters will be objected to, upon the ground that such voters did not actually and personally vote at the said election, but were dead, absent, or otherwise incapable of voting at the time of such election, and that such voters were, each of them, illegally personated by some other person who falsely assumed to vote, and did vote, in the name of such voter for the respondent. |

CLASS 8.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|---|
| | | The votes of each of these voters will be objected to on the ground that he aided, abetted, counselled, or procured at the said last election the commission of the offense of personation. |

CLASS 9.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|--|
| | | The votes of each of these voters will be objected to on the ground that at the time of the last election such voter was an alien (or an infant under twenty-one, or a woman, as the case may be), and therefore incapable of voting at the said election. |

CLASS 10.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|---|
| | | The votes of each of these voters will be objected to on the ground that within six months before and during the last election such voter was retained, hired and employed for reward for the purposes of the election by the petitioner, a candidate at such election, as agent, canvasser, clerk, messenger, or in other like employment, contrary to the provisions of 30 & 31 Vict. c. 102, s. 11.* |

* Scotch and Irish, 31 & 32 Vict. cc. 48, 49.

APPENDIX.

CLASS 11.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|---|
| | | The votes of each of these voters will be objected to on the ground that he was disqualified at the time of the said election for voting, by reason of his having received parochial relief, or other alms, within twelve months of the date of the election. |

CLASS 12.*

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|--|
| | | The following ballot-papers will be objected to on the ground that they are not marked with the official mark, and ought not to have been counted. |

CLASS 13.*

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|--|
| | | The following ballot-papers will be objected to on the ground that they are unmarked or void from uncertainty. |

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CLASS 14.*

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|---|
| | | The following ballot-papers will be objected to on the grounds that they are so marked that the votes might be identified and ought not to have been counted. |

* In these three classes (12, 13, 14) the numbers of the ballot-papers objected to after inspection ought to be furnished.

CLASS 15.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|---|
| | | The petitioner (or respondent as the case may be) will claim to strike off from the votes given to the respondent (or petitioner, or A. B. if the petitioner does not claim the seat for himself) one vote in respect of the vote of each of these persons on the ground that the respondent (or petitioner or the said A.B.) a candidate at the said election was by himself or his agent guilty at the said election of bribery (or treating or undue influence) in respect of them within the meaning of section 25 of the Ballot Act. |

CLASS 16.

| Register Number. | Name of the Voter. | Grounds of Objection. |
|------------------|--------------------|--|
| | | The petitioner (<i>or respondent as the case may be</i>) will claim to strike off from the votes given to the respondent (<i>or petitioner or A.B. if the petitioner does not claim the seat for himself</i>) one vote in respect of the vote of each of these persons on the ground that being retained or employed for reward by or on behalf of the respondent (<i>or petitioner or the said A.B.</i>) a candidate at the said election for the purposes of the said election or some of them within the meaning of § 25 of the Ballot Act they voted at the said election. |

CLASS 17.

| Register Number. | Name of the Voter. | Ground of Addition. |
|------------------|--------------------|---|
| | | The votes of each of these voters will be sought to be added on the ground that such voter tendered his vote at the said last election and had a valid right and title to vote thereat. |

Special Forms of Petition.

In the High Court of Justice,
Common Pleas Division.

“The Parliamentary Elections Act, 1868.”

Election for the county of holden on the and days
of in the year of our Lord

The petition of A.B., of in the county of

1. Your petitioner is a person who voted at the above election.
 2. Your petitioner states that the said election was holden on the days of , in the year of our Lord , when C. D., E. F. and G. H. and I. K., esquires, were candidates; and the returning officer has returned the said E. F. and C. D. as being duly elected.
 3. Your petitioner says that the said E. F. and C. D. were by themselves, by their agents or agent and by other persons on their behalf, and each of them or one of them was by himself, by his agents or agent and by other persons on his behalf, guilty of bribery before, during and after the said election, whereby they were and are and each of them or one of them was and is incapacitated to serve in the present parliament for the said county, and the said election and return of the said E. F. and C. D. and each of them or one of them were and are wholly null and void.
 4. Your petitioner further says that the said E. F. and C. D. were by themselves, by their agents or agent and by other persons on their behalf, and each of them or one of them was by himself, by his agent or agents and by other persons on his behalf, guilty of treating before, during and after the said election, whereby they were and are and each of them or one of them was and is incapacitated to serve in the present parliament for the said county, and the said election and return of the said E. F. and C. D. and each of them or one of them were and are wholly null and void.
 5. Your petitioner further says that the said E. F. and C. D. were by themselves, by their agents or agent and by other persons on their behalf, and by each of them or one of them was by himself, by his agents or agent and other persons on his behalf, guilty of undue influence before, during and after the said election, whereby they were and are and each of them or one of them was and is incapacitated to serve in the present parliament for the said county, and the said election and the return of the said E. F. and C. D. and each of them or one of them were and are wholly null and void.
-

6. Your petitioners also say that the said E. F. and C. D. and each of them or one of them personally engaged before, during or at the election to which this petition relates as canvassers or agents, canvasser or agent, persons or person reported guilty of corrupt practices or a corrupt practice by the report of commissioners appointed in pursuance of the act of the session of the fifteenth and sixteenth years of the reign of her present majesty, chapter fifty-seven, that is to say, reported so guilty by the report of the commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in the borough of _____ and which report is mentioned and referred to in "The Representation of the People Act, 1867, knowing that the persons or person so engaged had been so reported guilty of corrupt practices or a corrupt practice within seven years previous to such engagement, whereby the said election and return of the said E. F. and C. D. and each of them or one of them were and are wholly null and void.

Wherefore your petitioner prays that it may be determined that both of them the said E. F. and C. D. were not duly elected or duly returned, and that the said election and return so far as respects both of the said E. F. and C. D. were and are wholly null and void; or that failing that it may be determined that one of them the said E. F. and C. D. was not duly elected or duly returned, and that the said election and return so far as respects one of them were and are null and void.

In the High Court of Justice,
Common Pleas Division.

"The Parliamentary Elections Act, 1868."

Election for the borough of _____, holden on the _____ and _____ days
of _____, in the year of our Lord _____
The petition of A. B. of _____, in the county of _____, whose
name is subscribed.

1. Your petitioner was a candidate at the above election.
2. And your petitioner states that the said election was holden on the _____ and _____ days of _____, in the year of our Lord _____ when C. D. and your petitioner A. B. were candidates, and the returning officer has returned C. D. as being duly elected.
3. And your petitioner further says, that the said C. D. was by himself and other persons on his behalf guilty of bribery, treating and undue influence before, during and after the said election, whereby he was and is incapacitated from serving in parliament for the said borough of _____, and the said election and return of the said C. D. were and are wholly null and void.

4. And your petitioner further says, that many persons voted at the said election and were reckoned upon the poll for the said C. D. who were guilty of bribery, treating or undue influence, and who where bribed, treated or unduly influenced to vote thereat for him, and that the said votes of all such person were null and void and ought now to be struck off the poll.

5. And your petitioner further says, that many persons who were registered as voters for the borough of were admitted to vote and did vote in favour of the said C. D. who where and had been disqualified by legal incapacity to vote and were prohibited by law from voting by virtue of divers statutes in force at the time of the said election, and such votes ought now to be struck off the poll.

6. And your petitioner further says, that many persons who were disqualified to vote at such election by reason of their holding or having held disqualifying employments, or having been restrained, hired or employed for the purposes of the election for reward by and on behalf of the said C. D. at the said election as agents, canvassers, clerks, messengers or other like employments, were, nevertheless, admitted to vote and did vote for the said C. D., and that such votes ought now to be struck off the poll.

7. And your petitioner further says, that many persons voted at the said election for the said C. D. who had become disqualified to vote, and were incapable of voting at the said election on the ground of their having received parochial or other alms or relief, and that such votes ought now to be struck off the poll.

8. And your petitioner further says, that certain persons whose names appear on the said register voted twice at the said election in favour of the said C. D., and that the votes of such persons should now be struck of the poll.

9. And your petitioner further says, that persons personated and voted as and for certain electors whose names appear on the registers of the said borough, but who did not themselves vote, and that the votes so recorded ought now to be struck off the poll.

10. And your petitioner further says, that the said C. D. obtained an apparent and colourable majority over your petitioner the said A. B. whereas in truth and in fact your petitioner the said A. B. had a majority of votes of the electors of the said borough who voted at the said election, and who were at the time thereof duly qualified by law to vote, and was duly elected as a member to serve in parliament for the said borough, and ought to have been returned as such member.

11. And your petitioner further says, that the said C. D. personally engaged at the said election as a canvasser or agent for the management and purposes of the election a certain person, that is to say, one E. F., knowing that such person had within seven years previous to such engagement and such election been reported guilty of a corrupt practice,

that is to say bribery, by the committee of the house of commons. whereby the election and return of the said C. D. were and are null and void.

Wherefore your petitioner prays that it may be determined that the said C. D. was not duly elected or returned, and that his election and return were and are wholly null and void, and that your petitioner the said A. B. was duly elected, and ought to have been returned.

A. B.

In the High Court of Justice,
Common Pleas Division.

"The Parliamentary Elections Act, 1868."

Electors for the borough of _____, in the county of _____, holden on the _____ day of _____, in the year of our Lord _____

The petition of A. B. of _____, in the county of _____, and of _____, in the county of _____, and C. D., of _____, in the city of _____, whose names are subscribed.

1. Your petitioners were respectively candidates at the said election and claim to have a right to have been returned thereat.

2. And your petitioners state, that the election was holden on the _____ day of _____, in the year of our Lord _____, when E. F., G. H., your petitioner A. B., and your petitioner C. D., were candidates, and the returning officer has returned the said E. F. and G. H. as being duly elected.

3. And your petitioners say, that the said E. F. and G. H. were by themselves and each of them, and other persons on their and each of their behalf guilty of bribery, treating and undue influence before, during and after the said election, whereby they and each of them were and are incapacitated to serve in the present parliament for the said borough of _____, and the said election and return of the said E. F. and G. H. were and are null and void.

4. That many persons voted at the said election and were reckoned upon the poll of the said E. F. and G. H. who were bribed, treated and unduly influenced to vote thereat for them the said E. F. and G. H., that the votes of all such persons were null and void and ought now to be struck off the poll.

5. That many persons voted at the said election and were reckoned upon the poll of the said E. F. who were bribed, treated and unduly influenced to vote thereat for the said E. F. that the votes of all such persons were null and void and ought now to be struck off the poll of the said E. F.

6. That many persons voted at the said election and were reckoned upon the poll of the said G. H. who were bribed, treated and unduly influenced to vote thereat for the said G. H., that the votes of all such persons were null and void and ought now to be struck off the poll of the said G. H.

7. That divers persons voted at the said election and were reckoned upon the poll of the said E. F. and G. H. who were before and at and after the said election guilty of bribery, treating and undue influence, and that all such persons were thereby disqualified from voting and their votes ought now to be struck off the poll.

8. That divers persons voted at the said election and were reckoned upon the poll of the said E. F. who were before and at and after the said election guilty of bribery, treating and undue influence, and that all such persons were thereby disqualified from voting, and their votes ought now to be struck off the poll of the said E. F.

9. That divers persons voted at the said election and were reckoned upon the poll of the said G. H. who were before and at and after the said election guilty of bribery, treating and undue influence, and that all such persons were thereby disqualified from voting, and their votes ought now to be struck off the poll of the said G. H.

10. That divers persons voted at the said election and were reckoned upon the poll of the said E. F. and G. H. who were registered electors of the said borough of by the revising barrister, but had since then and before the said election become disqualified for and incapable of lawfully voting at the said election and that their vote ought now to be struck off the poll.

11. That divers persons voted at the said election and were reckoned upon the poll of the said E. F. who were registered electors of the said borough of by the revising barrister, but had since then and before the said election become disqualified found incapable of lawfully voting at the said election and that their votes ought now to be struck off the poll of the said E. F.

12. That divers persons voted at the said election and were reckoned upon the poll of the said G. H. who were registered electors of the said borough of by the revising barrister, but had since then and before the said election become disqualified for and incapable of lawfully voting at the said election and that their votes ought now to be struck off the poll of the said G. H.

13. That the majority of votes declared by the returning officer in favour of the said E. F. and G. H. and of each of them respectively, was only an apparent and colourable majority, inasmuch as the votes of divers persons were accepted and received on the said poll in favour of the said E. F. and G. H., and in favour of the said G. H. separately from the said E. F., who were not legally entitled and had no right to vote at the said election, and that the real majority of good and legal votes polled at the said election was in favour of the said A. B. and C. D. and each of

them over the said E. F. and G. H. and over each of them, and that the said A. B. and C. D. were duly elected members to serve in Parliament and ought to be returned as such.

Wherefore your petitioners pray that it may be determined that the said E. F. and G. H. were not nor was either of them duly elected or returned, and that the election and return of the said E. F. and G. H. and each of them was and were null and void, and that the said A. B. and C. D. and each of them were respectively duly elected and ought to have been returned to serve as members for the said borough of _____ in this present parliament.

And your petitioners will ever pray, &c.

A. B.
C. D.

In the High Court of Justice.
Common Pleas Division.

"The Municipal Election Act, 1872."

Election holden on the 1st day of November, 18 ____ . The petition of _____ of _____, in the county of _____, whose name is subscribed. 1. Your petitioner, _____, was, at the above election, a candidate to represent the ward called _____, being one of the wards of the borough of _____, in the Council of the said borough of _____.—2. Your petitioner says that the election in the said ward for a Councillor was holden on the 1st day of November, 18 ____, when your petitioner and _____, in the said borough of _____, were candidates for election to the office of Councillor then vacant for the said _____, and the returning officer returned _____ as being duly elected a Councillor to supply such vacancy, who accepted and took upon himself the office.—Your petitioner says that the said _____ was, by himself, and others on his behalf, guilty of treating, corrupt practices, and undue influence, before, during, and after the said election, whereby he was and is incapacitated to serve as a Councillor for the said borough, and that the said election and the return of the said _____ was null and void.—4. And your petitioner says many persons voted at the said election, and were reckoned as voting for and upon the poll of the said _____, who bribed, treated, and unduly influenced to vote thereat for him, the said _____, and that the votes of all such persons were null and void, and ought now to be struck off the poll, and that the said election and return of the said _____ is null and void.—5. And your petitioner says that at the above election certain persons who voted for the said _____ did knowingly personate and falsely assume to vote in the name of certain other persons whose names appear upon the burgess roll of the said borough of _____, as persons entitled to vote at the said election for _____, and such votes ought not to be reckoned for the said _____, and ought to be disal-

lowed and struck off the poll; and that the said election and return of the said is null and void.—6. And your petitioner says that at the above election certain persons who voted for the said were procured by the said and others on his behalf, to personate and falsely assume to vote in the name of certain other persons whose names appear in the said burgess-roll as persons entitled to vote for the said , and that such votes ought not to be reckoned for the said , and ought to be disallowed and struck off the poll, and that the election and return of the said is null and void.—7. And your petitioner says that at the above election certain persons were admitted to vote, and did vote, for the said , who were not entitled by law to vote at the said election, and who were disabled by law from voting at the same, and such votes ought not to be reckoned for the said , and ought to be disallowed and struck off the poll, and the said election of the said is null and void.—8. And your petitioner says that at the above election the said employed certain burgesses to act for him in procuring his election as such Town Councillor, and for reward the said burgesses voted for the said at the said election, and such votes ought not to be reckoned for the said , and ought to be disallowed and struck off the poll, and that the said election and return of the said is null and void.—9. And your petitioner says that certain votes given at the above election for the said were given upon ballot papers not duly bearing the official mark, and were erroneously received as being good and valid votes, and counted for the said ; and that all such votes were null and void, and ought not to be reckoned of the said , and ought to be disallowed and struck off from the votes polled for the said , and that the election and return for the said is null and void.—10. And your petitioner says that the city of is divided into two wards—to wit, A ward, and B ward, and that divers voters voted first of all in A ward, and subsequently to that in B ward, and that the votes so given by the said voters in B ward were wholly null and void, and ought not to have been counted.—11. And your petitioner says, that the majority of the votes declared by the returning officer at the said election to be in favour of the said , and over your petitioner, was only an apparent and colourable majority, inasmuch as divers persons who voted at the election in favour of the said were not legally entitled and had no right to vote at the said election; and that the real majority of good votes polled at the said election was in favour of your petitioner over the said , and your petitioner was duly elected a member to serve as a Councillor of the said borough for the said ward, and ought to be returned as such. Wherefore your petitioner prays that it may be determined that the said election and return of the said was null and void, and that he was not duly elected or returned, and your petitioner was duly elected, and ought to have been returned.

Other forms of petitions will be found in the following cases?—

Hackney 2 O'M & H. 77; electors prevented from voting by the misconduct of the returning officer.

Athlone, 2 O'M. & H. 186: Ballot papers wrongly rejected by the returning officer: returning officer a respondent.

Mayo, 2 O'M. & H. 191: Nomination wrongly rejected by returning officer: returning officer a respondent.

Harwich, 1 P. R. & D. 314: Premature closing of the Poll.

Canterbury, K. & O. 131: Returning officer acting with partiality in the conduct of the election, and making false return.

Warrington, 1 O'M. & H. 42: Voters prevented from voting by confusion at polling places, caused by defective arrangements and incompetence of returning officer.

Dungarron, K. & O. 6. Member disqualified by bribery at a former election.

Kidderminster, 2 O'M. & H. 170: Payment in respect of corrupt practices.

Launceston, 2 O'M. & H. 129: Voters bribed by being allowed to shoot rabbits.

Poole, 2 O'M. & H. 123: Payments after the election in pursuance of corrupt offers and agreements previously made.

Form of Notice of Disqualification of a Candidate.

Election, 18

The Electors of the County [or Borough] of

Whereas A. B., a candidate for the representation of the County [or Borough] of at an election now about to be held for the said County [or Borough] is [state grounds of disqualification] and whereas by reason of the said [or matters aforesaid] the said A. B. is incapacitated and disqualified from being elected as a Member of Parliament for the said County [or Borough]: Now take notice that all votes given for the said A. B. at the said election will be thrown away and wholly null and void.

(Signed) C. D.,

Agent for E. F., a Candidate for the representation of the County [or Borough] of at the approaching election.

(Note to last form.)

Other similar forms of notice of disqualification will be found in the *Londonderry case* (1860) stating disqualification on the ground of government contracts: and *Drinkwater v. Deakin* (*Launceston*), 9. L. R. C. P., 626: the latter may be useful as a precedent though the grounds of disqualification stated are insufficient.

Necessary Affidavit for Withdrawal of Petition.

In the High Court of Justice.
Common Pleas Division.

"Parliamentary Elections Act, 1868."

Election Petition for

— Petitioner.

— Respondent.

Affidavit of

I of , in the county of , the above-named respondent make oath and say as follows:—

That to the best of my knowledge, information and belief the withdrawal of, or application to withdraw, this petition, is not the result of any corrupt arrangement, or in consideration of the withdrawal of or application to withdraw, any other petition.

Forms of Special Cases will be found in the Reports of the Cases following:

Trench v. Nolan, Ir. Rep. 6 Com. Law 464. *Tipperary*, 3 O'M. & H. 41 & seq. *Athlone*, 2 O'M. & H. 189. *Mayo*, 2 O'M. & H. 193. *Drogheda*, 2 O'M. & H. 203. *Davis v. Lord Kensington*, 9 L. R. C. P., 720. *Stowe v. Jolliffe*, 9 L. R. C. P., 734. *Malcolm v. Parry*, 9 L. R. C. P., 610.

THE TOWN COUNCILS AND LOCAL BOARDS ACT, 1880.

An Act to abolish the property qualification for
members of Municipal Corporations and Local
Governing Bodies.

BE it enacted by the Queen's most Excellent Majesty, by
and with the advice and consent of the Lords Spiritual and
Temporal, and Commons, in this present Parliament assembled,
and by the authority of the same, as follows :

Alternative
qualification
for member-
ship of local
authority.

1.—(1.) Subject as in this section mentioned, every person
shall be qualified to be elected and to be a member of a local
authority who is at the time of election qualified to elect to
any membership of that authority.

(2.) For the purposes of this section the term "local
authority" means,—

5 & 6 W. 1.
c. 76.

(a) The Council of a borough under the Municipal Corpora-
tions Act, 1835, or any Act amending the same:

(b) In Ireland, the town council of any town corporate,
Commissioners appointed by virtue of an Act made
in the ninth year of King George the Fourth,
intituled "An Act to make provision for the light-
ing, cleansing, and watching of cities and towns cor-
porate, and market towns in Ireland in certain cases,"
and any municipal town or township commissioners
appointed under any general or local Act.

(3) The qualifications mentioned in this section shall be
alternatives for and shall not repeal or take away any other
qualification.

(4) Nothing in this section shall qualify any person for
any office who is disqualified for the office by the existing law
by reason of office, contract, bankruptcy, or any other matter
of disqualification or disability.

(5.) If a person qualified under this section ceases for six
months to reside within the borough or district in which he
has been elected to an office, he shall cease to be qualified
under this section and his office shall become vacant, unless he
was at the time of his election and continues to be qualified in
some other manner.

Short title.

2. This Act may be cited as the Town Councils and Local
Boards Act, 1880.

Extent.

3. This Act shall extend to Ireland, but not to Scotland.

THE PARLIAMENTARY ELECTIONS & CORRUPT PRACTICES ACT, 1880.

An Act to amend the law relating to the Conveyance of Voters to the Poll, and to continue the Acts relating to the Prevention of Corrupt Practices at Parliamentary Elections and the Acts relating to Election Petitions.

WHEREAS by section thirty-six of the Representation of the People Act, 1867, it is enacted that it shall not be lawful for any candidate or any one on his behalf at any election for a borough, except certain boroughs therein mentioned, to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person, and that any such payment shall be deemed to be an illegal payment, and it is expedient to amend such enactment :

And whereas the Acts mentioned in the Schedule hereto expire on the thirty-first day of December one thousand eight hundred and eighty, and it is expedient to continue the same :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Parliamentary Elections and Corrupt Practices Act, 1880. Short title.

2. The thirty-sixth section of the Representation of the People Act, 1867, shall be repealed so far as concerns the conveyance of voters within any borough. Repeal of s. 36, of 30 & 31 Vict. c. 102, as to payment of expenses of conveyance of voters to the poll.

3. In all elections whatever of a member or members to serve in Parliament for any county, division of a county, or for any city or burgh, or district of burgh, in Scotland, no inquiry shall be permitted at the time of polling as to the right of any person to vote, except only as follows ; (that is to say,) that the presiding officer or clerk appointed by the returning officer to attend at a polling station shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or either of them : Amendment of law as to parliamentary elections in Scotland.

1. Are you the same person whose name appears as A.B. on the register of voters now in force for the county of [or for the] division of the county of [or for the] city [or burgh] of the [or for the] district or burghs [as the case may be];
2. Have you already voted, either here or elsewhere, at this election for the county of [or for the] division of the county of [or for the] city [or burgh] of [or for the] district of burghs [as the case may be] :

And if any person shall wilfully make a false answer to either of the questions aforesaid, he shall be deemed guilty of a crime and offence within the meaning of "The Ballot Act, 1872."

Continuance
of Acts.

4. This Act and the Acts mentioned in the Schedule to this Act, so far as they are unrepealed, shall continue in force until the thirty-first day of December one thousand eight hundred and eighty-one, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.

SCHEDULE.

ACTS REFERRED TO.

| Session and Chapter. | Title. |
|-----------------------|---|
| 17 & 18 Vict. c. 102. | The Corrupt Practices Prevention Act, 1854. |
| 21 & 22 Vict. c. 87. | An Act to continue and amend the Corrupt Practices Prevention Act, 1854. |
| 26 & 27 Vict. c. 29. | An Act to amend and continue the Law relating to Corrupt Practices at Elections of Members of Parliament. |
| 31 & 32 Vict. c. 125. | The Parliamentary Elections Act, 1868. |
| 32 & 33 Vict. c. 21. | The Corrupt Practices Commission Expenses Act, 1869. |
| 34 & 35 Vict. c. 61. | The Election Commissioners Expenses Act, 1871. |
| 42 & 43 Vict. c. 75. | The Parliamentary Elections and Corrupt Practices Act, 1879. |

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